Canadian Centre for Occupational Health and Safety

Centre canadien d'hygiène et de sécurité au travail

DRUG TESTING IN THE WORKPLACE

A Conference

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Canadian Centre
for Occupational Health
and Safety

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Welcome

Gordon Atherley, President and Chief Executive Officer
Canadian Centre for Occupational
Health and Safety

I want to very much welcome you here. Faced with problems of postal disruptions and airline disruptions and our own financial crisis which delayed an issue of our newsletter, At the Centre, we struggled to decide whether we should cancel this conference. I am glad we did not. The number of attendees may be small, but the quality is very high. In fact, I would go so far as to say that this conference, as a continuation of the workshop, will result in the sort of agreements and understandings which are a very important way of dealing with social issues. This conference belongs to the speakers and the participants, not to the Canadian Centre for Occupational Health and Safety.

As you know, our role is as a tripartite organization. Among other things, the Centre provides a forum for government, employers, professionals, and labour to talk and meet with each other, to discuss and, where possible, to evolve joint solutions to occupational health and safety problems. The Centre's role is to hand out information where it is wanted and to facilitate these various processes. This conference is another way in which the Centre serves the communities with the responsibilities for occupational health and safety.

I wish you a highly successful conference, and I'd like to say to you all—if you have ideas about the Centre and what more the Centre can do to assist you, please don't hesitate to use this as an occasion to tell us. Thank you very much and have a good day.

Lillian Vine, Manager, Committees and Workshops
Canadian Centre for Occupational Health
and Safety

Bruce Cunningham is a Divisional Employee Assistance Programs (EAP) Consultant for the Community Services Division of the Addiction Research Foundation of Ontario. He has been employed with the Addiction Research Foundation since 1972. He served as a Community Consultant and Centre Director in the St Catharines Centre until 1980, when he became EAP Consultant with the Hamilton Centre. The Niagara and Hamilton areas have had a high penetration of EAP amongst the major employers. Bruce has a diverse academic background in mathematics, physics, aeronautics, theology and behavioural sciences, and 20 years of experience in community work. He has been a member of the EAP Council in Hamilton and Employee Assistance Ontario, and is presently a member of the Employee Assistance Society of North America. He recently chaired an Addiction Research Foundation Task Group on employment-related drug screening. Bruce is going to speak about the scope and extent of the drug problem.

Why the attention to the problem? What is the extent of the problem?

Bruce Cunningham, Addiction Research Foundation

I very much thank Lillian and the Centre for inviting me to participate. I will attempt to address the question—why the attention to the problem and what is the extent of the problem?

When we at the Addiction Research Foundation first studied employment-related drug screening, we found that the motivation to test came from several sources. For some, it was that the workplace should take a leadership role in reducing drug use in society and in cutting the profits of organized crime. We did not address that concern in our report, but we acknowledge that part of the pressure for testing comes from outside the workplace.

For others, the focus of attention has to do with concern for health and safety issues in the workplace. In our task group, we did try to address this part of the question and look at the extent alcohol and other drug use correlated to problems in the workplace.

Slide 1

1987 Addiction Research Foundation
Workplace Survey
Reduced Work due to an Injury in the Past Year

Category	# in Sample	# with Changes	% of Sample
All employees	1363	40	2.9%
Average daily alcohol			
0 drinks	404	12	3.0%
< 2 drinks	739	13	1.8%
2-3 drinks	52	3	5.8%
3-4 drinks	31	2	6.5%
> 4 drinks	35	4	11.4%

Slide 2

1987 Addiction Research Foundation
Workplace Survey
Reduced Work due to an Injury in the Past Year

Category	# in Sample	# with Changes	% of Sample
All employees	1 363	40	2.9%
Never used drugs	1 163	29	2.4%
Rarely used drugs	116	6	5.2%
Occasionnally/Often used drugs	84	6	7.1%

Bruce Cunningham *continued*

We don't know in a precise sense, and we can't state categorically the exact relationship between alcohol and drug use and health and safety problems in the workplace. However, there is a considerable source of information gained over time that points to a relationship. I would like to review some of the sources of information that led us to think that there may be, and probably are, some problems in this area.

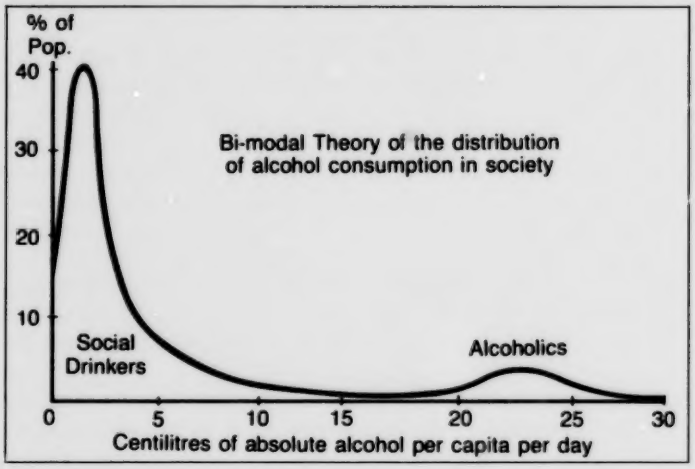
Our knowledge of psychoactive substances (substances that affect the central nervous system) has shown that they do impair functioning. There is some logic to think that someone who is impaired could pose a health and safety risk to others. There is also considerable experience in working with people who are undergoing treatment for a dependency problem on alcohol or other drug substances. People in treatment centres, whether they're referred from the workplace or seek help on their own, frequently report poor work performance, behaviour that proved a cost to the organization, and a higher frequency of accidents than would normally be expected.

Looking at persons referred to employee assistance programs shows that their performance improves tremendously in the year after treatment. There probably was a connection between their previous lifestyle and the performance problems that led to their referral. We find that in programs where managers refer people for assistance based on serious work performance problems, there is an 80% likelihood that the employee has a strong addiction or dependency problem. There seems to be a high correlation between heavy use of substances and problems in the workplace.

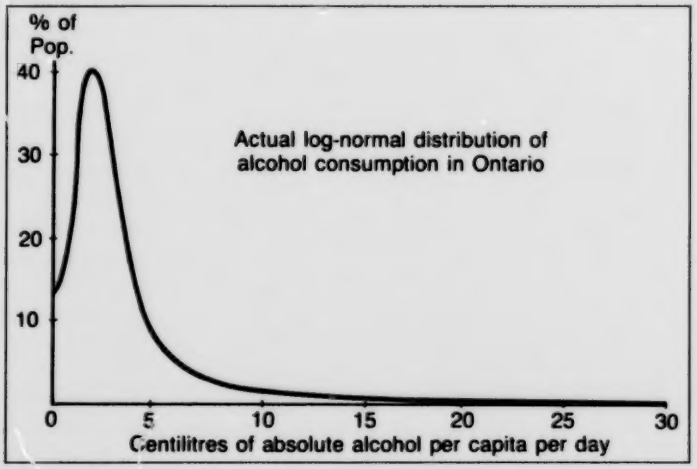
That was the kind of information we had that suggested serious and heavy use of substances does correlate with workplace problems. The information doesn't tell us that the majority of people who use substances have problems; it doesn't tell us anything about moderate or light use of substances; it does suggest that at the heavy end of consumption, problems have surfaced which should be further investigated.

The other pattern that we find is that there is no clear line between light and heavy use. The graphs on the following page illustrate this fact.

Graph 1



Graph 2



This is a consumption curve. The vertical axis on this graph shows the percentage of the population involved. The horizontal axis represents daily average consumption of alcohol in Ontario (graph 2). As you move to the right, you're dealing with higher levels of daily average consumption of alcohol. When we first started looking at this question, the general assumption was that society was divided into two groups. The first group represents social drinkers, represented by the bell curve distribution on the left side of the graph; on the average, that would represent about two drinks a day.

The second group on the right hand side represents the heavy drinkers. When consumption was studied through a variety of means such as surveys, sales slips and observations, it's shown to be a continuous curve. The actual grade of the curve varies from

Bruce Cunningham *continued*

society to society, but tends to follow a log normal distribution. The vast majority of consumers are at the left end, but with no clear break between them and the heavier users. This gradient of gradually heavier consumption suggests that consumers on the right account for significantly more problems reported than those on the left. This doesn't mean that everybody at the right end has problems and that people at the other end don't, but more problems show up at the right end. We haven't studied the consumption of other drugs to the same extent as we have studied alcohol. But, whenever it is studied, this kind of continuous log normal distribution of consumption is found.

This phenomenon is important regarding the subject of urine testing, particularly if it is done at only one point in time. It's difficult to tell from one test where someone is on that curve; a series of tests done over a period of time would probably distinguish the heavier users from the light users.

What is the rate of consumption of alcohol and other drugs as far as we know it? The figures that I have for Ontario are based on adult consumption obtained through household surveys. Household surveys have some limits. Generally, you get a cross-section of the population, and you tend to overlook the people who don't live in households. You can see that alcohol consumption has remained relatively stable over the past ten years. The question asked was, have you consumed at all in the last year? You can see the '87, '85 and '83 data. People were asked about daily use, which would indicate heavy use, although someone who consumes one drink a day would not be perceived as a heavy drinker. About 10% or 12% of the group as a whole reported daily use of alcohol. The younger age group reported drinking, but not so many of them reported daily drinking.

Slide 3

Reported Substance use in Ontario

Substance	All Adults 1977	1982	1984	1987	18 - 20 year olds 1984	1987
Alcohol						
Used at all in last 12 months	80%	78%	85%	83%	90%	
Used daily - % of Sample	11%	8%	11%	10%	4%	5%
- % of Users	13%	11%	13%	12%	5%	6%
Marijuana						
Used at all in last 12 months	8%	8%	11%	10%	28%	20%
Used daily - % of Sample	0.5%	0.8%	0.5%	0.5%	---	---
- % of Users	6%	10%	5%	5%	---	---
Cocaine						
Ever used in lifetime	N/A	N/A	N/A	N/A	7%	14%
Used at all in past 12 months	N/A	N/A	N/A	N/A	---	---
Used daily	N/A	N/A	0	0	0	0

Bruce Cunningham *continued*

When we look at marijuana, we get lower numbers. The use of marijuana among adults in society is not nearly as prevalent as the use of alcohol. On the average, 10% of the Ontario adult population reported using marijuana at least once in the last year. In 1987, the younger age group dropped to 20% from 28% in 1984. Our school survey results published recently showed a similar drop. It does indicate that the younger people are not using marijuana as frequently as in previous years. You can see that the percentage of daily users on the bottom line represents 5-6% of users, which is not radically different from the pattern for alcohol. When you take it as a percentage of the whole sample, which in workplaces would represent all the workers, you are looking at approximately 0.5% reporting daily usage of marijuana. It gives us some idea of the proportion; I don't think these slides prove anything, other than to give an indication of the extent of problems in the workplace.

The figures for cocaine are not quite as available and weren't asked for in the earlier surveys; there are some interesting features, but we won't recognize a trend until further surveys are done. Between 1984 and 1987, people were asked, "Have you ever used cocaine?" The figures doubled from 3% to 6%, and in the younger age group, doubled from 7% to 14%. That would tend to support the sense that cocaine use was on the rise in Canada and followed the pattern in the United States. However, when the question was asked, "Have you used it in the last 12 months?", the figures went from 1.7% to 1.8%, which is not a significant change. This might suggest that usage of cocaine had peaked between 1984 and 1986, and we may now be at a more steady level of consumption. It certainly doesn't support a fear that things are out of control; it suggests there may not be as serious a problem with cocaine in Canada as we once thought.

The above is information on consumption. We have some evidence that heavy consumption is associated with problems. I want to talk about what we know about the relationship between use or heavy use and accidents.

Our own organization has done some surveys in workplaces recently; the purpose of the surveys was to study not this particular question, but many questions. One question asked about alcohol and drug use, and another asked people if they had ever had to curtail their work because of an accident or an illness (not necessarily accidents or illnesses at work). We correlated what people said about the alcohol that they drink with how their work was affected. You can see that, once we get beyond the people who don't drink at all, we have almost a linear relationship. As reported frequency of usage went up, people having to curtail their work activity also went up. Perhaps among the non-drinkers were

Bruce Cunningham *continued*

some people who used to drink heavily, and they might have inflated the figures for the non-drinkers. This data doesn't prove anything, but it suggests that there may be some kind of continuous gradient from zero to serious problems related to increasing consumption of alcohol. When the same question was looked at in relation to use of drugs for recreation, we found a similar picture. Those who reported more frequent use, more frequently reported that their work was affected.

There is a suggestion in this that the more people consume, the more likely their work is to be affected. It's possible that both the consumption and the missing of work were caused by another factor such as stress or heredity. We're not identifying a cause, but we are trying to establish a relationship.

Slide 4

1985 U.S.A. Telephone Survey

# in sample		1740
# reporting an accident		304
# of accidents:	work	156
	recreation	123
	home	73
	traffic	31
	TOTAL	383

When we tried to get data on actual accidents, it became harder, and we had to rely primarily on an American telephone survey done in '83 and '85. Out of 2,500 households phoned in New England, 1,740 were employed. Questions were asked about accidents—this is all self-reported, and unverified. It is interesting that, of the total number of accidents reported, 40% were reported to have occurred at work. The question was broken down by asking if it was related to various substances used. There was no significant relationship between work accidents and occasional drinking on the job, drinking over lunch or using drugs. (In our report earlier this year, we did report a 70% greater likelihood of accidents for people who use drugs, that was for any kind of accident, but it didn't hold up for work-related accidents. In terms of work-related accidents, there was no connection.)

Slide 5

1985 U.S.A. Telephone Survey

Relationships to job accidents

Drinking on job	not significant
Drinking at lunch	not significant
Use of drugs	not significant
Drinking 5+ per day	2X
Drinking on job weekly or more	3X
Hangover on job weekly or more	2X

You can see that people who drank heavily or people who drank on the job more regularly did have a higher rate of work-related accidents. This tends to confirm the clinical experience and the EAP experience that there are some people who have problems. One of the things that has come out in the data on workplace referrals is that, even though alcoholics as a group have a higher rate of accidents than other employees, quite often it's a sub-group within the alcoholics that accounts for the higher rate.

The original studies at DuPont showed a two to three times higher rate of accidents and absenteeism for the alcoholics, but 55% of the alcoholics had close to normal performance and 45% of the group bumped up the average for the whole group. US Navy studies found that approximately 20% of the problem drinkers continued to drink despite warnings, and they had much higher performance deficits than the rest of the problem drinking group.

Slide 6

1983 Ontario Fatalities

Category	#	%
Pleasure boat fatalities	70	100%
Alcohol present	28	40%
Alcohol present > .08	21	30%
Motor vehicle driver fatalities	619	100%
Had been drinking	57	9%
Ability impaired	259	42%

When we tried to get some information on actual accidents, all we could find were studies of victims of fatal accidents. In terms of what people do in their leisure time such as driving boats and cars, and getting themselves killed in the process, there is quite a high correlation with their levels of impairment.

Slide 7

Job Deaths in Alberta 1979-83

Category	#	%
Occupational deaths	339	
Toxicology tests	254	100%
Alcohol	42	16.5%
Alcohol > .08	12	4.7%
Drugs	36	14.2%
Prescription drugs (incl.)	23	9.1%
Marijuana (incl.)	6	2.4%

The only work-related studies of accident victims we could find were from Alberta where toxicology studies on victims of fatal accidents in workplaces are systematically done. These studies were done from 1979-83, and they give us some idea of numbers and suggest that the number that might be related is not that large. These are the victims of accidents, not necessarily the causes of accidents. You can see 16.5% with some alcohol in their system, and 14% with some drugs in their system. The study didn't report if any of those were cross-related. If you're looking for the source of the problems whether it's legal drugs such as alcohol or prescription drugs or illegal drugs, you can see that the legal substances are by far the larger base of any problem that may exist. Marijuana, cocaine and heroin are less significant in this study in terms of these accidents. These figures don't prove anything because we don't know the causes of the accidents, even though some of these victims were impaired—some other factors could have caused the accidents. But they give us some idea of the extent of the problem.

Slide 8

Job Deaths in Alberta 1979-83

Accident type	#	< .08	> .08
Struck by	48	7	1
Falls	40	4	6
Caught in, under, etc.	39	4	0
Electrical contact	20	2	0
Contact with toxics	24	3	0
Motor vehicles	47	8	5
Fires/Explosions	8	1	0
Cave-ins	5	0	0
Unclassified	11	1	0

Bruce Cunningham *continued*

With the Alberta figures broken down, you can see that not all accidents seem to show up with the impairment of alcohol as a factor. The people who fell to their death and the people who were killed in motor vehicle accidents show a fairly high relationship to heavy use of alcohol. It may be then that certain kinds of accidents or certain kinds of jobs have more risk than other kinds.

We're convinced that there is some risk to health and safety in the workplace from the consumption of alcohol and other drugs. We certainly don't feel that illegal drugs are a problem by themselves, and any program with only that focus can't really justify itself as being primarily concerned with health and safety. Any approach to deal with drugs as a health and safety issue surely would have to address all the substances and the proportion of accidents that might be attributed to this cause. The Ontario Federation of Labour suggests 2%, we would think maybe 2% to 15% of situations might have some alcohol or drug factor. I don't believe that drugs or alcohol cause many accidents by themselves, but they're probably a factor in some.

It appears as though there is a drug problem with some employees. Our experience has been that there are various ways of intervening. Education of the workforce about the health and safety risks associated with the use of alcohol and drugs can be a powerful weapon. In a study of 100 people who were arrested for marijuana use, the ones who said they intended to stop cited health concerns based on information they had received as the reason for stopping, rather than fear they would get caught again. Education can be a very powerful force, although by itself it isn't going to solve the problem. Many other interventions have been found to be effective, including training supervisors to recognize some of the patterns that indicate a person is moving in the direction of becoming a safety risk, employee assistance programs, union counselling programs, and alerting security staff. In some situations, urine tests may be relevant for certain jobs.

Report of the drug testing in the workplace workshop

Lillian Vine

Thank you very much Bruce. Our next speakers are Tony Hammer and Reg Basken.

Tony Hammer is the Medical Director of the Canadian operations, Polysar Limited. Tony is the person who started this whole thing. He came to us some eight months ago saying "I'm sort of in the middle, and probably other medical directors are, too. Our employers are wondering whether there's something to this drug testing. Labour doesn't seem to think it's a good idea. We need

Lillian Vine *continued*

some discussion in this country." He spent an afternoon at the Centre; we discussed it; we started making plans for a workshop. I will read you his brief biographical note. "For the past four years, Tony Hammer has been employed by Polysar Limited as Manager, Occupational Health Services and Medical Director. Before that he practised occupational medicine in the Armed Forces." I think there is much more to Tony than that, and it has been a lot of fun working with him.

In that first meeting, we decided that we should contact a union concerned with this issue. That's when Reg Basken came into the planning process with a great deal of enthusiasm.

In 1963, Reg Basken joined the staff of the Oil, Chemical and Atomic Workers International Union, which is now the Energy and Chemical Workers Union, and in July, 1984, was elected National Director. He's been a member of the Board of Directors of the Canada West Foundation, Senate of the University of Alberta, Executive Committee of the Governor General Study Conference, Board of Directors Canadian Foundation for Economic Education, Executive Council of the Canadian Labour Congress, President of the Cancer Society of Edmonton, President of the United Way of Edmonton and area—and those are the brief notes. There is probably a lot more.

Tony and Reg will tell you about the workshop.

Tony Hammer, Polysar Limited

Thank you very much Lillian. First of all, I think I should point out that Lillian has done by far the majority of the hard work behind this conference. She is to be congratulated.

This conference started because we, in the occupational medical profession, anticipated the need to confront pressures that might persuade us to be involved in drug testing in the workplace. Our initial reaction was that there was insufficient data to indicate that such testing was necessary. I'm not going to get into this in great detail because I think Bruce Cunningham has provided some very good data. It's particularly difficult to get information on the subject; the data he has is about as hard as you can get. There are not many people using drugs in the workplace in Canada, and the data we have indicates that the number does not justify testing.

Another issue raised at the workshop was ethics, particularly from the occupational physician's point of view. Incidentally, ethics is a surreal word. We tend to think of medical ethics in conjunction with decisions to switch off the life support respirator. However, it extends further than this, and you'll be glad to know that even

Tony Hammer *continued*

> occupational physicians have a code of ethics. I have chosen the American code of ethics because it can be contrasted with their guidelines on drug testing in the workplace.

The American Occupational Medical Association's code of ethical conduct states that:

> "The physician should accord the highest priority to the health and safety of the individual in the workplace; practise on a scientific basis with objectivity and integrity; actively oppose and strive to correct unethical conduct in relation to occupational health service; treat as confidential whatever is learned about the individuals served, releasing information only when required by law or by overriding public health considerations. The physician is to recognize that employees are entitled to counselling and that recommendations in relation to work and on the fitness of individuals do not entitle management to the details or the specific nature of a diagnosis."

Earlier this year, AOMA produced drug screening in the workplace ethical guidelines. I quote:

> "If appropriate constraints are observed, it is ethically acceptable to screen employees and prospective employees for the presence in their bodies of drugs, including alcohol, that might affect the ability to perform work in a safe manner."

They list the following considerations which are included in the program:

> "Any requirement for screening for drugs should be based on a reasonable business necessity; such a necessity might involve safety of the individual or other employees or the public; security needs related to job performance or requirement for a particular public image."

The final remark about public image produced a reaction in the United States, and I don't think it is compatible with the way Canadian occupational physicians would like to practise. They do, however, list some sensible guidelines on how it should be done. They are:

> "...maintain security of the sample, making sure the right technique such as gas chromatography/mass spectrometry is used; a qualified physician should evaluate positive results prior to a report to the employer; any report to the employer should only provide the information needed for work

Tony Hammer *continued*

> placement purposes or as required by regulations; identification of the employee or of the particular drugs found may not be necessary."

Frankly, I regard these two ethics documents as incompatible. I don't see how a physician could accept the drug screening guidelines and stick to the code of ethics without breaching confidentiality. If s/he's only going to make a recommendation on fitness to work, s/he can't really believe that the results of the tests alone provide a valid indication. It's all very well to say "with the employee's consent", but I think the consent is coerced when the job or job offer is conditional. I therefore regard it as invalid.

Pre-employment Testing

The group of physicians at the workshop were not in favour of drug testing. We divided drug testing (I include alcohol as a drug) into three groups. The first was pre-employment testing. We don't believe it's justified, and Bruce Cunningham's data, not available at that time, reinforces this view. We also think it's of questionable legality.

Random Testing For Safety

We don't believe it is justified either. We were influenced by both union and management of Air Canada in reaching the conclusion that random testing would not achieve anything even in the case of airline pilots, for example. Excluding the safety issue, we are sure that random testing of the existing workforce is illegal. It hasn't really been tested in the courts yet, but I think it's headed that way.

Just Cause

The third possible justification was "just cause". We are in agreement with the union movement that employees with impaired performance, particularly if it affects safety, should be confronted. It is the duty of the employer to ensure this.

And we think there are instances where testing is reasonable. We've been told that in Alberta post mortem examinations conducted on those involved in industrial accidents include testing for drugs and alcohol. I haven't heard any criticism of this practice. The issue arises, "Should we wait until someone is dead before testing?" Could we not test after a severe accident or a near miss? Not merely because of the near miss or the severe accident, but perhaps because there is reason to believe that the worker is impaired. Supposing s/he looks obviously stoned, and you believe s/he really shouldn't have been at work in the first place? We think it would be justifiable

Tony Hammer *continued*

for an employer to say "We would like to find out whether there are drugs or alcohol in your system."

Is it legal? We have already crossed this bridge. Impaired driving is a public health hazard, a threat to the driver and to other people on the road. Not many people would say it is an infringement of civil rights to compel a seemingly impaired driver to submit samples.

Another possible objection is that even if we were to test the blood and find high levels of drugs or alcohol, we wouldn't know whether it was related to the accident. I don't think at that stage, particularly after an accident, we can pause too long at that question. It's the "smoking gun" situation. If levels of substances in the blood account for impairment, it is reasonable to assume a causal relationship between that impairment and the accident.

In fact, I have seen a worker who was obviously impaired and had been involved in an accident. He had needle marks and he had been main-lining cocaine the night before. He was a drug abuser, in fact he admitted it to me, but suppose he had denied it? I would have liked to have recommended to management that they test him because, otherwise, we would have never gotten to the root cause of the accident he was involved in. We don't feel this kind of testing, under those circumstances, would be particularly common and we would not like it to be used as a "foot in the door" to justify testing under any other circumstances.

If testing is to be conducted under any other circumstances, we don't want anything to do with it. We don't think that employee assistance programs should have anything to do with it either. We don't want to be asked to take the samples; we don't want to be asked to look after the samples; we don't want to be asked to interpret the results. It potentially compromises the effectiveness of an occupational medical program in the workplace.

> "Unless a physician or a nurse believes that a test of any kind relates to a condition which affects the capacity of a worker to perform a job in safety or safety to the public, it is a breach of confidentiality and unethical to reveal the results without the employee's willing consent."

We don't believe it's possible to get around the problem of consent particularly when a worker is threatened with the loss of his job. We don't believe drugs or their metabolites or alcohol in the blood or urine of an individual constitutes an **immediate** threat to the health and safety of that individual or is a public health issue. As mentioned before, under some circumstances such as following an accident, there may be an exception.

Tony Ham[illegible]r *continued*

I would like to raise two points. Firstly we are looking at a social disease, drug abuse. Occupational physicians practise a branch of preventive medicine. There are measures which can be taken to avoid or prevent drug abuse; if people did not take the drugs or alcohol in the first place, no disease would result. It is interesting to reflect that we have a cure for AIDS—we don't need to know anything else about the virus that causes AIDS, the nature of the disease or its epidemiology. We have the solution to AIDS in our hands—the answer is modification of behaviour. The same goes for cancer. Some say we have a cure for 70% of cancer; the problem is it, too, involves modification of behaviour. Social sciences come into conflict with human rights issues when one tries to modify social behaviour. It's ironic that while we have "a cure" for drug abuse, AIDS and cancer, we are incapable of getting people to behave differently so that we can achieve it.

Finally, I get the strong impression that drug testing in the workplace is no longer an issue. In general the politicians in Canada seem to be saying they don't think it is justified. The only area which hasn't been resolved is in transportation.

A year ago, we were aware that there would be pressures for Canadian industries to start drug testing—both pre-employment and random—a spillover from the United States. I think it is a compliment to Gordon Atherley that the politicians have responded to us. Occupational physicians, unions and management were not in favour of testing; it is encouraging that our leaders have not supported testing so far. I think it is fitting to congratulate Gordon and Lillian. I note that American Motors intends to withdraw their drug testing program and that Warner Lambert have decided not to test. I'd be interested to know who is testing because whatever testing is going on, it's not generally known. It looks as though Canada has taken the moderate enlightened course.

Reg Basken, Energy and Chemical Workers' Union

The thought of drug testing in Canada no doubt came from the ideas of the American President. The Centre had a workshop in June of this year on this very important issue. I think the results of that workshop had some considerable effect on politicians and others. There are indications that changes have taken place since June. All of those changes, in my opinion, are good.

The labour group came into the June workshop concerned that a very serious issue was advancing into the workplace because people could not find a better answer. We dealt with the question of pre-employment drug testing, random drug testing, mandatory drug testing and with the question of "testing when just cause was evident."

Reg Basken *continued*

Pre-employment testing—absolutely, no—was the position we had taken. It doesn't take long for job applicants to find out that there is testing in a company and to use the system. It would be highly stupid and equally unlikely that candidates, knowing that they would be subject to drug testing, would take the risk of testing positive. The question of pre-employment testing is largely out the window in the United States because of cost. To the best of my knowledge, only one person out of 111,100 in a major telephone company in the United States, was not hired as a result of the drug testing program. The company simply cancelled it on the basis of cost.

Random drug testing—there is no point in trying to use the courts to justify this invasion on a social issue. There is no question that the confirmed drug user is smart enough not to get caught; if there is random testing and the test is done today, you know that for the next six months you are free to use drugs and not get caught. The user would likely be smart enough to handle that.

Mandatory drug testing—a very difficult legal question. If you do it to everybody, presumably you are being fair; everyone knows the rules, there should be no objections and no perceived pressure on individuals to consent. We in the labour movement don't think companies are stupid enough to waste money on a mandatory testing program. It's just not possible to find the profit line with enough money in it to waste $100, $200 or $300 on each test.

The one section that remains in doubt is the question Tony raised, and that is the question of just cause. When there is probable or just cause to think that someone is impaired by drugs, is testing then okay? Should it be permitted? Should it be required? I think the broad general feeling within the labour movement is, no. It can lead to abuse because the logical simplistic answer to the cause of an accident, if the person looks impaired, is to test and then list the impairment as a possible, probable or absolute cause of the accident. We suggest to you that all of the other usual and reasonable labour relations policies that exist should be able to deal with the question of impairment in those circumstances.

I think that the Honourable Jake Epp's position on drug testing, in a broad sense, is that Canada has now taken a direction. That direction is no drug testing. The Ontario Human Rights Commission has taken a public test of the question and has agreed to no testing, but there is a possibility that pre-employment testing could be considered not to be a violation of human rights, if it were done only after a job offer has been made. The Canadian tone is being established partly because of the work of CCOHS, the information that has been provided, and because of the June

Reg Basken *continued*

workshop, where the good discussion led not only to finding much common ground but also to views changing.

Some corporations still believe drug testing is the solution because there is a general feeling that drug or alcohol use in the workplace can cause accidents, productivity decline, absenteeism and tardiness.

Then we get into the question of the validity of tests. Consideration should be given to the stigma placed on an individual who may test positive, because of an inaccurate test, when the result should have been negative. We have no right as employers, medical directors or unions to place individuals on the spot to be tested or to possibly be fired for refusing. The presumption is so rotten. The presumption is that if you are prepared to take the tests, you are not a drug user, and if you are not prepared to take the test, you are. Some people really don't want to take the test because they don't want to go through the abuse. You can't have a drug test without somebody watching you urinate. In the United States they are selling drug free urine. Someone has to watch to see that the urine for drug testing is actually the person's urine.

Transportation and the just cause question has been really difficult for the trade union movement to deal with. The federal government in the United States came out with a flat policy of drug testing in transportation. A major railroad and its union got together; the union said "It's not fair to the individual, so we disagree with drug testing." The employer said "It is too expensive, and we've tried it and it didn't work. We did not find one person in our tests that we could conclude was a drug abuser." In spite of the American government decision, they came to the conclusion that they would only allow testing under very serious conditions and then only if suspicion was confirmed by two supervisory people trained in identification of drug addiction and drug abuse. The union said that that virtually eliminated the over 100,000 people employed by that company from a drug testing program because the formula was so confining and difficult.

I heard people talk about the need to test train engineers, railroad engineers and airline pilots. I understand. I believe, because of the amount of flying that I do, that my airline pilot should not be under the influence of drugs—but should we test him? If we did, what would we find? We would find that if a pilot wanted to take drugs, and knew that a drug test was a possibility, it would be stupid to report for work with cocaine or marijuana in the body. It's known a line of coke taken within an hour or two before the flight wouldn't show up in the test; but if you tested in mid-flight, it would. So should we test in mid-flight? What I'm trying to say is that it's nonsense; it doesn't prove anything, it's a simplistic

Reg Basken *continued*

excuse to show that we are really serious about doing something. I'm concerned because, for a time, we got caught up with the idea that something had to be done. Almost everybody in society agrees that we shouldn't have drug abuse in the world of work or in society, and so we began looking for some kind of solution.

I think the answer is that we shouldn't waste our time, our money and our efforts on drug testing—that all of the other reasonable and normal labour relations policies can be implemented. We still have the debate on individual cases—whether there can be just cause. Tony, in the final analysis, after you have established that there is likely just cause for testing, based on a person looking impaired, what difference does it make at that point? Somebody is dead. The logic of preventing an accident for that poor fellow is gone; it's too late. The chances of your convincing me to stay off drugs because that person died from being on drugs is relatively small. I don't have the full answer to the just cause question, except to say that with good labour relations and practices, you will find that the employer can control the conditions in the world of work, and control them without resorting to testing that's presumably accurate, fair, logical or definitive; I use "presumable" advisedly because there are very deep doubts that those presumptions are true.

In June, we discussed pre-employment testing. The labour movement said "No". We talked about the reasons. We talked with management and with the medical professionals. We also talked about mandatory drug testing, random drug testing and just cause testing and said "No". We had some doubt on the last one; but we cannot explain the reason to test if a person is obviously on drugs. What does it prove except a scientific evaluation that that person was on drugs? Whether or not that had anything to do with the accident or the death is still subject to the view of the individual doing the examination—it isn't a precise science. Without it being a precise science, what do you gain?

I'm National Director of my union and we have 150 collective agreements in negotiations today. Shouldn't my membership have the right to expect that I'm sober and not on drugs when I'm negotiating those agreements—so I should be tested. I do have one qualification that Lillian doesn't know about—I'm qualified to be a Supreme Court Justice in the United States; I have never smoked marijuana in my life, so I am obviously qualified. After all, was not the basis of the conclusion that Mr Justice Ginsberg should not be a Supreme Court Justice based on his having once smoked marijuana? What about the board of directors of a corporation—aren't they expected to be reasonably drug free and alcohol free? If it's good enough in the world of work, then it's good enough in the boardroom, in the union head office and for all of you. We studied and vacillated over all of these things.

Reg Basken *continued*

In the final analysis, when the labour movement discussed the question alone and with professionals and management, the conclusion that we came to was that there is nothing to be gained by drug testing. All of the preventive measures that we want and all of the considerations and the responsibilities that we believe we have in society should be part of other normal, reasonable tests. Tests are not a mathematical or simplistic solution to confirm that someone is a drug user. We haven't considered yet whether the drug user is an abuser; the presence of drugs only indicates the presence of drugs—it indicates nothing further. All of the rest of it will be left to judgment anyway, so use good judgment in the first place.

Lillian Vine

Tony, Reg, thank you both very much for your reports and for the kind words. Let me clarify the background of the workshop held in June. Centre staff, particularly its President, Gordon Atherley, had expressed views about the soundness of testing for drugs, but there is no "Centre point of view", nor was it the Centre's presentation to decision-makers. We were asked to hold this workshop; we helped to bring people together; we helped them with their discussion.

Some very important things came out of it. One of the most important was that people changed their minds and found that they could reach a high level of agreement. Another is that a small invited group said "It's not enough for us to agree behind closed doors—we have to let people who are making decisions know." We did. The Centre drafted a communication, checked it with the chairmen of the management, labour and professional groups at the workshop and we sent it to all the Ministers responsible for occupational health and safety, Transport Canada, Health and Welfare Canada and their Deputy Ministers. Most of them responded; most of them responded in a way quite different from the usual "I thank you very much for bringing the matter to my attention." Some really discussed the issue. Whether any positions governments take have been influenced by the workshop decisions, I don't know. If they have, it's the participants they responded to, not the Centre.

I know that some people have been influenced by that statement. When it appeared in the press, I had a letter from the Safety Director of a provincial association to say that he disagreed with the conclusions, that his organization did not agree either, but that before he recommended a final position to the board of directors, he wanted to know more. This happened just before the proceedings were published. I immediately called him; he was away, so I sent the summary of the proceedings and a note explaining how the

Lillian Vine *continued*

position had been reached by labour, management and professionals. He called me back, and he still isn't sure he agrees. He couldn't come to this conference, but said he'd like to know what was said here before he goes to his board of directors. This is somebody who said "I don't agree," but then qualified that with "I'm not prepared to go to the board of directors with a recommendation until I find out what people are saying and why." Whatever his final decision, he has been influenced.

That is the strength of people working together to examine serious issues and reach conclusions. We thank Tony very much for requesting the Centre to facilitate these discussions, and Tony and Reg for working with us.

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Steve Timmings, Supervisor, Human Drug Testing, Mann Testing Laboratories

I'm from Mann Testing Laboratories. I do this type of testing, so I have a vested interested in this issue. I don't agree with a lot of your stance. For instance, American Motors was spending around $800 an applicant to test prior to making a decision as to whether to offer a job. Out of that $800, $35 was used solely for drug testing, and $765 for other types of testing; drug testing is a very small expense in that program. You seem to suggest that drugs or alcohol do not cause accidents; I think that if you look at Bruce Cunningham's slides, it's the opposite. I think they show that alcohol (where the statistics are more prevalent) is a direct cause of accidents; it may be less so for drugs.

Reg Basken

The point that I'm making is—what difference does it make? So you've concluded by drug testing or common sense that a person was impaired. You haven't proved that it has anything to do with the world of work but have put blame on an individual.

Steve Timmings

Look at what's happening with the breathalyzer test on the roads. I think it's changed a lot of our attitudes about drinking and driving. Without the testing, our attitudes would not have changed.

Reg Basken

If anybody in the world of work thinks that it's okay to be drunk or on drugs at work then somebody has created the wrong impression. It's never been acceptable to be drunk at work; it's never been acceptable to be impaired at work.

Steve Timmings

It was never acceptable to be impaired on the roads...

Reg Basken

Yes, it was.

Steve Timmings

Until they started testing. The statistics showed that once testing started, there were fewer traffic fatalities.

Reg Basken

Testing motor vehicle drivers was probably logical because we had become so lackadaisical and nonchalant about drinking and driving. Happy hours in pubs were advertised—come and get drunk with us before you drive home for dinner. In Alberta, there were too many drunks on the highway after two o'clock in the morning. At two o'clock in the morning the pubs closed. Do you know what the solution was? Keep the pubs open till three o'clock. I think that there's a role for testing in a number of situations, but not for drugs in the world of work.

Debbie Weedon, CAW - Local 1915

If it is just cause to take someone off a shop floor for drug testing because they happen to look like they're on drugs or alcohol, why does it take so long to get designated substances that are killing workers out of the workplace? I've got chemicals in my plant that could probably fell an elephant. This is nothing but discrimination against workers. If I seem a little indignant, it's because I am a worker and this is going to affect me and the 1,500 people in my plant.

Energy and chemical workers' union film

Lillian Vine

A film was shown at the workshop, which we had hoped to show today. Unfortunately, it is not available. It shows quite graphically what happens when an industry decides to start testing in a workplace. Its panel of professionals is impressive and the panelists express their doubts about the worth of the program.

Health care industry, self-employed professionals

Lillian Vine

Our next speaker is Neil Johnston. Neil Johnston is the Administrator of the Hamilton Health Sciences Laboratory Program. He has had a long association with the Centre and a long standing interest in the application of medical testing, including drug testing, to workers.

Neil is a very good friend of the Centre. But, he'd never been to a Centre workshop until last June, when he was invited to take part in the Drug Testing in the Workplace Workshop. Since then, he's become a workshop enthusiast, and he has a proposal for a workshop in the works for the Centre.

Neil is going to talk about the health care profession and in particular, the self-employed professional.

Neil Johnston, Hamilton Health Sciences Laboratory Program

The topic that I'd like to address is the dimensions, detection and treatment of substance abuse among self-regulating health professionals.

The reason I am addressing this meeting is principally because during a long working relationship with the Canadian Centre for Occupational Health and Safety, I have reviewed and evaluated the use and abuse of the medical testing of workers. My interest in the detection and treatment of substance abuse relative to employment stems from their parallels to other involuntary health care applied in the realm of employment.

At a meeting last summer of health and safety representatives of the Ontario Federation of Labour which I addressed, I was impressed by a division among groups of representatives. A minority, particularly among those in the transportation and energy related industries, felt it essential for the protection of their fellow workers and the public for substance abuse to be detected, if necessary, by random testing. Others felt as I do, that such testing is medically inappropriate and a clear violation of the person. In one industry the union concerned had gone so far as to organize and operate a drug testing program itself.

At the Drug Testing in the Workplace Workshop organized by the Centre, we concluded that testing for substance addiction as a medical condition which may compromise safety or performance may be permissible with stringent controls, but that random testing was not. Clearly, however, given the power of employers, many workers may be subject to drug testing of one kind or another whether they like it or not. There is still no satisfactory evidence that such drug testing has led to any reduction in accident rates.

Neil Johnston *continued*

There is some evidence that drug testing has, as might be predicted, led to the labelling of workers as substance abusers when this was not the case; this can happen either because tests were inadequate to differentiate legal and illegal drugs or because the results were interpreted inappropriately by authorities.

At the Centre Workshop, the question was raised, perhaps cynically, "If workers are to be subject to drug testing as a medical manoeuver or unnecessarily treated for substance abuse by medical personnel, what guarantees are there that these medical personnel are not themselves substance abusers?" I was asked for thisconference to review the magnitude of drug abuse problems among health professionals and to contrast approaches to their detection and treatment with those in other situations.

It's apparent from published literature that, in general, health professionals, whether self-employed or not, and other self-employed individuals show no particular difference in their use or abuse of substances from other groups in society. There are some particular substance dependency problems in health care providers not seen as commonly in others which are the subject of concern and action by the professions concerned. It has been widely reported for most of this century that physicians in particular are more commonly addicted to drugs, particularly opiates, than non-physicians. A review of the literature and reports on which these contentions are based has found no basis for these conclusions and it is likely the case that because physicians are a visible group with access to drugs, they have been subject to biased observation and reporting, a case of guilt by association.

The nature of the problem of substance abuse in health professionals

A recent survey by McAuliffe and others examined psychoactive drug use among practising and student physicians as well as practising and student pharmacists. The study divided drug use into three categories: recreational, self-treatment or instrumental by which is meant the use of drugs to stay awake or improve performance at work or sports.

Slide 9

Percentage of Drug Users among Physicians, Pharmacists and Students

	Physicians	Medical Students	Pharmacists	Pharmacy Students
At least one use	60	77	46	62
Regular use	10	16	7	23
Drug dependent	3	5	2	4

Neil Johnston *continued*

As you can see in this slide, nearly 60% of practising physicians had used a psychoactive drug (for any reason) at least once compared to 46% of pharmacists. This work was done in a New England state, presumably Massachusetts; we are not looking at Canadian data. It's important to note as well that the figure for physicians shown here includes self-treatment. If you take out self-treatment as a category, it removes the difference shown between the pharmacists and the physicians; there's a substantial amount of that occurring. Among the students, 77% of medical students had used psychoactive drugs at least once compared to 62% of pharmacy students. Regular use, as might be predicted, was somewhat less common, but almost 10% of physicians and 7% of pharmacists were regular users as were 16% of medical students and almost 23% of pharmacy students. Perhaps of more concern, over 3% of practising physicians, 2% of pharmacists, over 5% of medical students and 4% of pharmacy students reported that they either were or had been drug-dependent.

The authors of this study concluded from their data that the proportion of practising physicians using psychoactive drugs would most likely grow as student users themselves became practising physicians given their more frequent use of drugs than their seniors. It was noted by the authors that drug use among physicians, except for self-treatment, is no more common than among dentists and lawyers, and is substantially the same as the rates in general urban populations.

In a study of 1,000 American physicians undergoing treatment for substance abuse it was observed that anaesthetists, family and general practitioners were more likely to suffer impairment from substance abuse than those in other medical specialties. Anaesthetists in particular seemed to have a higher rate of drug dependency leading to treatment than other specialists. It is true that anaesthetists may have greater access than most physicians to psychoactive drugs, but whether their observed excess of health problems related to drug use is because of their being more closely observed or simply because access to drugs attracted them to the specialty in the first place is unknown. As is frequently the case with attempts to attribute causation of outcome to exposure, the possibilities are endless.

One report of the characteristics of Ontario Physicians entering treatment for drug problems and referred to the Addiction Research Foundation found no anaesthetists in the thirty-nine physicians evaluated.

A survey by Brewster of Ontario physicians for substance abuse found that 5 of 433 male and 1 of 333 female respondents had been treated for "problems with alcohol or drugs".

Neil Johnston *continued*

Based upon the reports and evidence I have reviewed, I can conclude that the contention that physicians and other self-employed health professionals have greater frequencies of either drug dependence or recreational drug use cannot be supported. Among those treated for substance addiction the use of Demerol and some opiates apparently is more common than among general professionals.

In sharp contrast to the response by employee organizations and employers to the detection and treatment of substance abuse in general have been the responses of organizations representing or licensing health professionals and hospitals in which they work. The difference between health professionals and other workers seems to be most apparent in the development of EAP.

Employee assistance programs

While it seems unlikely that there are quantitative differences in substance abuse between health professionals and other workers, there seems to be substantial differences in the types and organization of "employee" assistance programs.

The majority of health professionals are subject to licensing and licensing is generally controlled by organizations other than their employers. Disciplinary action related to substance abuse or for any other reason generally involves the licensing body. Several state medical associations in the United States have implemented programs designed to assist physicians suffering from substance dependence. Some of these, notably the associations in Georgia, have become so successful that they attract patients from outside the state and even from other countries. The licensing or professional associations of other health professionals including nurses, pharmacists, veterinarians and dentists have organized their own assistance programs designed to both educate regarding the hazards of substance abuse and to act as referral and treatment agency for those who succumb.

Drug testing, even random testing, frequently forms part of the approach or follow-up to treatment for substance abuse and frequently return to work may be subject to agreement to undergo random testing. In the case of physicians who are in the main self-employed, the majority have privileges to admit patients to hospitals. These privileges are just that and may be withdrawn for cause at any time. Physicians applying for privileges at hospitals have their credentials reviewed by a medical staff group which then recommends to the board of the hospital whether privileges and what kind of privileges should be extended.

Neil Johnston *continued*

Recently, court decisions relating to liability for the actions of physicians in treating patients have clearly led to the conclusion that hospitals which either countenance substance abuse by physicians or do not investigate the background of applicants thoroughly enough for it will be held liable if any incident occurs in which impairment is a factor.

It seems possible that to protect themselves against litigation, hospitals may demand evidence that a physician is not a substance abuser before privileges will be extended. In the cases of pharmacists and nurses who more typically tend to be salaried employees of the hospitals, they are subject to whatever policy that hospital may have relating to drug testing either at pre-employment or on a continuing basis.

I am certainly unaware of any hospital in Canada which screens physicians for substance use prior to their being granted privileges but here, as in most things, it is likely that American decisions and practices will have some influence.

An innovative program organized by the licensing bodies and professional associations of health professionals has been implemented in Ontario.

I recently attended the first meeting of the Ontario Health Professionals Assistance Program or OHPAP. I was very impressed by the leadership and innovation shown by this organization in developing what amounts to employee assistance programs for the groups represented. OHPAP is a collaborative program for physicians, nurses, dentists, pharmacists and veterinarians in Ontario which has rationalized and co-ordinated various programs which had been offered by different professional bodies in the province.

OHPAP in collaboration with the Addiction Research Foundation provides a network for the identification and counselling of health professionals who may show signs of substance abuse likely to compromise their ability to work. Some of the professions involved have individual volunteer members who act as a front line in counselling those with a substance problem to obtain help. Specific medical assessment and treatment programs are provided by experienced professionals in collaboration with the Addiction Research Foundation. A major objective of the OHPAP is to identify individuals with problems before major harm can befall them, their families or members of the public who have placed themselves, or in the case of veterinarians, their birds and beasts, in their care.

Neil Johnston *continued*

The program is a young one and it is too early to determine its overall impact. Nonetheless, it is unlikely to do harm and clearly has enormous potential to do good. I was impressed by the contrast between the approach taken by these health professionals and that taken in other employment situations.

The initiative in the case of health professionals has been taken by those health professionals or their professional organizations themselves and not, so far as I am aware, by the hospitals which are analogous to being their employers. Seemingly, in some industries, the assumption is made by employers that substantial numbers of substance abusers must be present among their employees and need to be detected by drug testing. Their objectives in embracing drug testing are unclear. If the objective is to promote safety, this should best be achieved through effective training of workers and supervisors and improvements in plants, processes and equipment. If the objective is to detect a medical problem—substance dependence—which may lead to accidents, why stop with drug testing? In my opinion, an equipment operator not compliant with medication schedules for diabetes, epilepsy or even hypertension is at least as dangerous as a substance abuser and yet there has been no crusade to test for therapeutic drug levels. In addition, testing for drugs doesn't provide feedback. If you want to change a person's behaviour or change a situation or prevent an accident, you need to know before it happens what the problem is, not afterwards; it's too late then. If the objective is a moral crusade, it is beneath contempt.

Health care professionals seem to have the same range of substance abuse problems as other workers. The approaches being taken by organizations of health professionals to the problem of substance abuse are pragmatic and non-judgmental. They will likely preclude action by employers and leave it where it should be, in the hands of the individuals and their organizations. While clearly there is a place for cooperation between employers and employees in organizing assistance plans, action by employee organizations is likely to lead to less prejudicial and more effective treatment of substance abuse problems when these are present.

Brian Kohler, Health and Safety Officer, Energy & Chemical Workers' Union, Local 800

I'd like to direct my question to Bruce Cunningham. There seems to be a lot of reliance on the Addiction Research Foundation's statistics to justify the idea of drug testing for just cause or probable cause. The implication is that people look at these statistics and use them as evidence that there is a problem in the workplace. I question the scientific validity of those statistics because most of them rely on a causal type of relationship which can't be proved.

Brian Kohler *continued*

For example, you said that 20% of people involved in accidents have alcohol or drugs in their bodies and, therefore, you conclude that there is a relationship; but if 20% of all the drivers on the road or all the people in the workplace also have drugs or alcohol in their bodies, then there is no causal relationship—your statistics vanish. I think that, at last count, about 17 people died in Ontario mines this year. I could investigate those deaths and find that most or all of them were wearing hard hats and conclude that hard hats caused the accidents. It's a ridiculous assumption and yet you've forged ahead with these types of statistics and people have used them to justify this type of crusade. Do you have any response to this?

Bruce Cunningham

Basically, I agree with what you're saying. We weren't saying that it proved a causal relationship—it was a correlation that merited some further study. Problems have been found in the past and substances are known to impair; when you find the presence of substances in an accident, it's reasonable to think that there may be a relationship, but the figures that I have presented don't prove the relationship; they are correlated. We haven't used our figures to justify interventions of drug testing; we've used them to suggest that there may be a problem that's worth looking at.

Brian Kohler

You've actually answered my question. The point I was trying to make, and I understand your position, is that you can make a judgmental or a first impression view that there is some sort of a link. But you've presented several slides of statistics which may have given a false impression that there is some scientific proof of this which I contend there is not.

Chuck Emberson, Secretary, Health and Safety Committee, United Steel Workers of America, Local 1005

I have a question for Dr Hammer regarding the just cause. You said that testing will be justified in some circumstances; you then said it was most undesirable for the EAP or the occupational medical department to get involved in the drug testing issue. Who then gets involved? Who controls the sampling? Who controls the testing? Who controls the results of those tests and how are they used? Where do we go from there?

Tony Hammer

You raise a very valid point. Part of the rationale is to distance the medical department from being portrayed as the agent of management in screening workers and extensively taking the responsibility of making the decisions of whether they are fit or unfit. A good occupational medical service should have achieved a fairly good relationship with the employees. For example, in the chemical industry where it is fairly hazardous and there is a medical surveillance program, it's largely dependent on the goodwill of the workers to submit themselves to medical screening. We don't want to compromise relationships such as that.

What we seek to do is to make it clear that drug screening is not at the behest of the medical department nor is it a medical manoeuvre. However, it is a management manoeuvre which has an impact on the medical department. I think it's justifiable for the medical department to consult with management in making sure that it is done properly. Usually, it's the only resource within the company that acts as a link between management and the agents that actually do the testing. Management tends to ask the medical department to just tag drug screening onto the medical screening process for pre-employment or to once a month just walk into the workplace and pick out certain workers and test them. This is the part that we want to get out of; we don't think it has anything to do with us, but we would like to be consulted to make sure that it's done properly, and have a say in the design of the testing itself. We would also like to become involved to ensure the employee's right to hear the results and to confidentiality.

Our role is to say whether someone is fit, unfit or fit with limitations to work. If we don't believe that the results of an alcohol test or a drug test have anything to do with an employee's fitness to work, I'd like to reserve the right to say to management "I'm not going to tell you." We would like involvement in the program earlier so that management defines its criteria for fitness or unfitness to work. We would like some involvement, but we want to make it quite clear that we don't want to be the agents for drug testing, and that it is not being done, in the majority of circumstances, at our request.

Chuck Emberson

Basically, you are saying that you want to be involved in the guidelines that management will use to do drug screening.

Tony Hammer

Yes, but definitely more. We would like to be able to tell the employee what the results are and to interpret them, and to make sure that s/he gets treatment, if needed—we regard that as medicine.

Tony Hammer *continued*

But I don't want to be the agent of management in making hiring and firing decisions on the basis of the results of these tests; that's what we should have nothing to do with.

Chuck Emberson

The just cause issue could lead to the employer or management saying "Because of this accident, we feel you may have been in some way impaired because of drug use, therefore, you have to take this test." Many managers and employers have become unscrupulous in trying to find blame elsewhere. Let's prevent a lot of the problems in the workplace which cause stress. I think the first speaker mentioned that stress may cause a person to drink. That's the problem—the problem is not the drinking, but what's causing the drinking. That is what we have to resolve and prevent. I worry that some employers would abuse testing just as some people would abuse drugs.

Tony Hammer

I don't agree with you that management is responsible for all the stress within society. However, I share with you the suspicion of management's motives for drug testing. I think we all agree that alcohol is a bigger problem than drugs. If they felt that drug and alcohol testing was an effective way of making the workplace safer, they would have been very anxious to test for alcohol years ago.

Peggy Nash, National Representative,
Canadian Auto Workers

I agree with you that in many cases drug testing is not about health and safety. My observation is that in the workplace a problem of non-performance, whether because of drug or alcohol use or for some other reason, is usually handled by the supervisor or the foreman, and the worker is disciplined or removed from the workplace. That's the way things have been until recently. Where there is drug or alcohol use in the work area, we advocate getting that individual into substance abuse programs; we have negotiated union counselling programs and/or substance abuse programs which have a very high rate of success. That system seems to be working fairly well because I don't see in the statistics any strong correlation with health and safety, so I don't think this is a health and safety question. I'd like Dr Hammer to elaborate why company doctors feel that they would like to take on the role of scientific foreman and get involved in initiating discipline. Or do they see themselves as safety cops in the workplace?

Tony Hammer

We are not cops in the workplace, and it's not our role to modify the behaviour of society. Doctors are required to intervene where someone's health represents a public health hazard or a hazard to others. For example, if someone with poor eyesight comes to me for a medical to drive a truck, I'm obliged to say "No" and to so inform the Ministry of Transport. In the same way, suppose someone who is driving a crane crushes someone against the wall and steps out impaired. I agree with you that it is the job not only of supervisors, but of shop stewards and co-workers under the Occupational Health and Safety Act to secure the safety of the workplace and to notify management of threats to that safety. It is entirely legitimate in the spirit of that for a doctor to intervene and say "listen, stop" especially if there is denial. Supposing s/he steps out and is obviously impaired and has been involved in a serious accident; I think it is legitimate for a doctor to say "I recommend to management, in the interest of the investigation that you're going to hold, that you compel this person to undergo some testing. And if you find something, to look at whether this was causal or related to the accident." I think doctors could have a role in that.

A guy was brought into my medical department stoned out of his mind; he had been found in a running truck; fortunately, it was parked. I detected that he had a substance abuse problem because he had undeniable signs—needle marks. Suppose he had no needle marks and he'd gone through a prolonged denial—I have a serious potential accident and a guy stoned out of his mind. If he is going to deny that he has a drinking problem at all, I would argue from the occupational physician's point of view, that he's going to deny that he has a substance abuse problem. He's a public health hazard and my recommendation to management is that he be tested, which is within the ethical code of the profession.

Peggy Nash

I think your answer is that you're both a foreman and a safety cop. What you are saying is that if someone obviously has an imparirment, then that person should not be in the workplace. I couldn't agree with you more, but it's the role of the foreman or the supervisor to take that person out of the workplace.

Tony Hammer

I disagree with you. It is also the role of the conscientious shop steward and the co-worker.

Peggy Nash

I said that initially; they're the people that identify them; they're not the ones that suspend them from their job.

Tony Hammer

I don't suspend them from their job. I simply make a recommendation to management that it might be justified to look at the circumstances more closely because there is an apparent hazard; there is denial which likely means refusal. But if he was tested and it was found that he was impaired, he would receive treatment; it would be a way of addressing a public health issue.

Peggy Nash

It just seems that if someone is obviously impaired, why the need to test?

Tony Hammer

Because you can't put someone into a treatment program merely for appearing impaired.

Peggy Nash

No, but that's the point that I'm trying to make. The foreman does have the power to prevent that obviously-impaired person from continuing to work.

Tony Hammer

What you're saying is that we make the diagnosis when we see that someone is impaired—we don't make the diagnosis. What we're saying is, s/he is impaired—we haven't a clue why—let's emplore the drug problem. If s/he is going to deny taking any drugs or alcohol, I suggest that there is a role for testing. Supposing s/he is found to be impaired and there is drug or alcohol at levels which explain the conduct, it is quite justified to say that s/he will not return to that job. I suggest that the testing may be the means by which we reach that conclusion, but not merely through disciplinary procedures such as oral or written warning, or self-assessment evaluation.

Bruce Cunningham

Urine testing will not tell you anything about impairment. The visual observation of the supervisor and the fellow workers will. A urine test by itself will not tell you that whatever is in the system is causing the impairment. It may be useful information to know that's a possible cause.

Stu Sullivan, Ontario Co-ordinator,
Energy & Chemical Workers' Union

This whole matter appears to have started as a political issue. As I understand it, all the surveys and studies done in the United States showed that there was actually a decline in the use of illegal substances. Neil Johnston raised some points about the medical profession and its self-discipline. What makes workers different in our society? Why is it okay for the medical profession to develop an in-house program, but workers need to be dictated to from outside? I would argue that we have programs in effect--the EAPs. The EAPs, which are worker-controlled and worker-led, are the most effective, and they don't involve drug testing. A certain pattern of behaviour may indicate a problem and a fellow worker on this program might approach that person. A person who has had the problem in the past and has been successful in recovering is usually the best counsellor, not a doctor or a social worker but someone who understands. If it's good enough for the medical professional and the management personnel, why isn't that program, in place for so many years, good enough for a worker drug abuse problem if one exists?

If there is an accident in the workplace, it's investigated. We already have the full mechanisms in place for investigations of accidents; I don't see where drug testing or alcohol testing comes into play. For example, a person is involved in an accident, is tested and traces of marijuana are found—what does that prove? Does it prove that that person had smoked a joint last week, the week before or had a joint on the job? We haven't been able to prove anything except now we have been able to point the finger and say "That must be the cause." The reality is that we have the systems in place that can work; just let them work; there is plenty of discipline. Sober or high, if found at fault under the Occupational Safety and Health Act, that worker can be charged.

Neil Johnston

I agree with your comment about the EAP. I don't really consider myself qualified to comment in detail on the work of the EAP, but I'm convinced from the discussions at the workshop in June, that certain unions have shown enormous leadership in getting these developed. I think that the comprehensive nature of the program that the health professionals have developed is its unique feature of covering at least five different groups in a co-ordinated effort, in pooling their resources, talent, knowledge and methods.

When someone, a co-worker, a supervisor, a shop steward or a company physician, comes across a situation where a worker is obviously impaired, is incapable of functioning or is presenting a danger to others, it may be drug-related. But if you find someone unconscious, it could be a diabetic coma, the consequence of an

Neil Johnston *continued*

epileptic fit, a transient ischemic attack. The decision that has to be made is how to handle the situation. Whether it is drug impairment or something else is irrelevant to the decision that has to be made to protect the health and safety of that individual or others. Drug testing is a red herring, a moral crusade; it has nothing to do with practicality. The issue that has to be addressed is how to handle the situation and to prevent accidents.

Tony Hammer

There is one thing that I would like to correct. I am one of the first advocates of EAP. Our treatment interventions in alcoholism and drug abuse are ineffective. The success rate from the very best programs we have is not good, whether it's union, management or family practitioner.

For example, someone is an alcoholic for seven years before anyone does anything about it. The natural history of the disease is that 50% of all alcoholics have an entirely satisfactory job performance at work and are valued members of society. In my subjective opinion, there are many unconfronted doctors in the medical profession and, in industry, co-workers do not confront each other on substance abuse until years later. There should be some other earlier indication to find these people than waiting for someone, a spouse, co-worker, doctor, or management to detect the problem and do something about it such as treatment. Drug testing is not a panacea. Unfortunately, we have poor diagnostic techniques; people evade the issue, go through denial, persuade others to stand off, and use every technique in the book because that's part of the disease. Drug testing is not a very good solution. EAP and people going to treatment are only a partial solution and that's why we are still discussing what we can do about the impaired people in the workplace and their threat to safety.

Keynote address

Lillian Vine

Leo Gerard started work at the age of 18 in the International Nickel Company's Smelter in Sudbury. In the Fall of 1985, he was elected Director of the Ontario Section of the United Steel Workers of America, the largest section in the country's largest industrial union.

That means he represents over 80,000 working people in industries large and small, from the steel mills of Hamilton and Sault Ste Marie to the mines of Northern Ontario to hundreds of smaller manufacturing and service industries across the province.

Lillian Vine *continued*

As dozens of employers know, Leo Gerard is an accomplished bargainer. He is an untiring activist for workers' health and safety and has made major gains in achieving job protection for workers in the face of rapid technological change.

He has been deeply involved in the development of education programs in his union. He negotiated, in two collective agreements, the first provision for English as a second language training in Toronto.

A leader who is described by a Toronto newspaper as "articulate and thoroughly likeable", Leo Gerard represents his union in many forums whether it be at a federal government inquiry into child care, at a Philippino victory celebration, or on the Premier's Advisory Committee.

We are delighted that Leo Gerard is with us and we look forward to his remarks.

Leo W Gerard, Director, District 6
United Steelworkers of America

I come to this conference with a very biased view. I take the position, as my union does, that the whole issue of drug testing is a red herring. The whole issue of drug testing doesn't deal with any real issues. I often think about the way this thing got elevated to prominence.

Ronald Reagan decided that there should be mandatory drug testing because, with all these US airplane incidents the pilots must be drunk or on drugs. Around that time Brian Mulroney was at Expo '86 and he decided "If Ron wants to do it, it must be good stuff and I want to do it too." I can remember the newspaper headlines about Canada having a serious drug problem; that there were shop, office and plant workers probably on drugs; and that we had to do something to stop it.

I remember in my union and in the plants management saying "We want to do this for safety reasons, to make the workplace safer." It had nothing to do with workplace health and safety because if it did, we wouldn't have 6,000 workers who will probably die next year as a result of workplace-induced occupational illnesses; we'd be doing something about that. Those aren't my numbers or the Steelworkers' numbers, those are numbers by the Advisory Council on Occupational Health and Safety. How many of last year's workplace deaths were related to drug abuse or alcohol abuse? I would suggest to you very few compared to improper procedures or faulty equipment. I have spoken with our shop

Leo W Gerard *continued*

stewards, EAP people, union counsellors who see this as a red herring.

We recognize that drug testing poses serious problems for unions. What it will mean is that our members will be required to undergo the indignities of urine testing and may, as a result, face serious consequences. Employers often promote drug testing as a means of combatting the ills of the workplace whether they be real or perceived. We in the labour movement realize that testing has heavy moral connotations. There isn't any statistical evidence that we know that's available to link workplace safety with drug or alcohol use.

In our union, we started to look at ways to handle the problem. We began to explore what legal avenues were open to us to protect our members from any attempt by employers to impose their will. The fundamental element we anticipated would be associated with testing is that it would probably be imposed unilaterally by the employer and, therefore, be subject to no control by the employee or the union. We were concerned with allowing the employer to impose punitive measures for suspected drug use rather than dealing with what we see as the underlying causes: social conditions, work conditions and in some cases work-related stress. Disciplinary measures would seem to be based on testing methods which would be most economical to the employer, and probably least effective.

Much doubt has been cast on the most common method of testing which involves the employee providing a urine sample on either a random or a continuing basis. In a recently-published article, Gordon Atherley, President and Chief Executive Officer of the Canadian Centre for Occupational Health and Safety, discusses the problems inherent in this method. He pointed out that the tests do not accurately distinguish between legal, illegal or passively inhaled drugs nor do they test for frequency of use. There is no agreement as to the relationship between levels found in the urine and impairment nor is there any consensus as to the level which should be considered positive for the purposes of the test. Several across-the-counter drugs have been consistently cited as potentially being confused with illicit drugs. Some commonly-ingested foods can sometimes cause false positive results. All of these issues indicate that fighting a discharge or a discipline, as a result of drug testing, would then require the union to also enter medical evidence. Taking cases forward to arbitration would help subvert the labour relations process because arbitration costs for the labour movement would skyrocket.

The most common drug testing procedures require the employee to provide a urine sample in front of a witness; this gives the individual tested no control over the sample. The test only detects

Leo W Gerard *continued*

use not abuse, and is not accurate in restricting the time period in which the use occurred. In the case of marijuana, use may have preceded the test by up to a few weeks, hours or minutes; traces remain in the body for some time. Drug testing causes both an assault on human dignity and an unjust way of dealing with employees who may need assistance, not discipline.

We reviewed the situation to see what can be done if an employer tries to unilaterally implement a drug testing program. For the last few years, we have become conditioned to place high expectations on the Charter of Rights and Freedoms to redress such wrongs. The Charter of Rights and Freedoms provides very little comfort to most employees in the face of what appears to be an unreasonable search and seizure under Section 8. The Charter only applies to the relationship between individuals and government or between individuals and those bodies carrying out a governmental function. Thus, the Charter could provide protection only if legislation were passed imposing mandatory drug testing with government approval. For those employees whose rights are guaranteed such that they can raise a Charter argument, the battle line will then be drawn over Section 1 which allows basic rights to be denied where it is "justifiable".

The leading case on the test of justifiable is a Supreme Court of Canada decision in the matter of Oaks. The court decided that a party seeking to limit a right must prove a governmental or social purpose, a substantially important objective that the means will lead to the desired ends, and that the methods used are the least intrusive. It appears that legislation imposing drug testing, if it were passed, may not meet these tests. In similar American cases, the courts have given much weight to the issue of public safety. It was found that the Charter itself contains a mechanism for removing legislation from its own reaches.

Another avenue for remedying employer instigated wrongs could have been the Human Rights Legislation. Section 2 of the Canadian Human Rights Act provides that it is discriminatory to make distinctions in employment on the grounds of disability which, pursuant to Section 20 of the Act, includes existing or previous dependency on alcohol or a drug. Both the Canadian Human Rights Commission Policy and case law hold that, "Action taken because an individual is perceived to have a problem is discriminatory even though the individual is not, in fact, disabled." The Act specifically prohibits certain actions if they result in the refusal to hire or continue to employ an individual or class of individuals. If drug testing were to be used to assist the employees and provide rehabilitation, then we believe it would not be contrary to the Act. There is a limitation in Section 14 of the Act which provides that

Leo W Gerard *continued*

otherwise discriminatory practices are acceptable if based on a bona fide occupational requirement.

The test is then twofold: the imposer of the restriction must honestly believe that it is necessary because of the nature of the job, and secondly, must show that the restriction is necessary for the safe, economical and efficient performance of the job. The Court has emphasized that an individual assessment of the employee's ability to perform the work was required. As a result, it appears that under the provisions of the Canadian Human Rights Act, testing cannot be used simply to identify undesirables nor can the result be used for some other purposes. The employer must have objective evidence linking the use of a particular drug to the ability to perform the essential duties of a job. Testing must come as a result of observed poor performance and it must be reasonably concluded that the individual has an actual problem with the substance. The employer must attempt to accommodate the individual.

We believe that substance testing should be seen as potentially contrary to the Act, although it can be saved by qualifying under a bona fide occupational exemption; it may be permissible when the essential duties of the job require an employee to be drug-free; the testing must be used to direct employees to rehabilitation.

The Ontario Human Rights Code, Section 14.1 provides that a person may not be discriminated against with respect to employment opportunities on the basis of a handicap; defined under another section of the code is "any physical infirmity caused by illness". The statute further goes on to require that handicapped employees be capable of performing and fulfilling the essential duties and requirements of the position. The provisions of the code are generally interpreted under the blanket policy of reasonable accommodation which could require the employer to offer a rehabilitative program to an employee as an alternative to refusing or terminating employment.

The situation most likely to confront our members will be one where the employer imposes drug testing unilaterally, an employee refuses the test or tests positive, and discipline follows which would likely be grieved or taken to arbitration. The question then becomes whether the employer has just cause to discipline or discharge, and could those cases be won. The issue is whether the failure to pass a urine test constitutes just cause for discipline or dismissal. As there are no cases yet on that point, we can begin by looking at the cases dealing with drug consumption.

In one case, possibly a US Supreme Court case, an employee was terminated for smoking marijuana. The evidence was not conclusive as to whether she had smoked marijuana on the plant

Leo W Gerard *continued*

premises or whether she was sufficiently impaired to affect her work performance. The arbitrator substituted a lesser penalty for the discharge and the grievor was reinstated without compensation. In another case, simple possession of marijuana had resulted in discharge. The arbitrator also reinstated the employee without compensation based on his good employment record and agreement to enter a rehabilitative program. In a series of other cases, use or possession has sometimes been found to constitute some form of just cause for some form of discipline or discharge.

What is germane to the issue of drug testing is unlike the cases on intoxication or impairment; a positive test result does not necessarily indicate any relationship to the employment facility itself. Marijuana or cocaine used hours, days, or weeks before the administration of the test can produce a positive result. Assuming the case in which there are no visible signs of impairment or any sustaining evidence to show other just cause, the situation is analogous to the cases dealing with the consumption of alcohol off the premises during the period when the employee is not being paid.

It was found that the company could not discipline those who consumed alcohol on their own unpaid breaks and that the rule was not reasonable in dealing with individuals who did not have care and control of company property. As to the proof of impairment that has been required, the employer must show that the alcohol or drug affected the employee's ability to carry out duties in a satisfactory manner or that fellow employees could have been put at risk.

There is also a substantial body of cases that deal with the employer's right to discharge where an employee has been charged or sentenced as a result of a criminal activity. Bear in mind that the case we are examining is one where the employee tests positive for some drug and has not been convicted of an offence for drug use or possession. It has been established that an employee who is convicted of a criminal offence during off-duty hours which prejudices the employer's property and security, its public reputation or the interest of other employees, may be terminated with just cause. But when the employee is convicted of an offence which is unrelated to the employment relationship and which does not affect the employer's legitimate business interest, s/he cannot be disciplined for the misconduct alone.

Our view is that drug testing is similar to situations where the employer requires the employee to undergo a medical examination by a company doctor. Employers argue that they have the right to verify the fitness of employees by virtue of the management rights clause in the collective agreement. Arbitrators, in many

Leo W Gerard *continued*

instances, have said that the clause does not permit them to do so. One arbitrator stated that the right to privacy is not lost by virtue of the employment relationship and there exists no common-law right to search an employee or subject him/her to a medical examination without consent. For the employer to justify such an invasion of personal privacy, the cases suggest that there must be a real and substantial suspicion, past practices or a contractual right; other alternatives have been exhausted; and the right to privacy must be balanced against legitimate business interest.

What about the right of an employee to refuse to be tested? Normally, in grievance and arbitration law the employee is expected to obey now and grieve later so that s/he will not be found to be insubordinate. There is an exception to this rule, where it can be shown that the harm done by obeying would be substantial and compensation could not or would not provide a remedy or relief. The immediate harm suffered must outweigh the company's interest in maintaining its authority or production. Steelworkers believe that, given the indignities of being required to provide a urine sample while being observed, these principles apply, that the facts are likely to prove successful and that the worker would have the right to refuse the test. Clearly, mandatory drug testing, in most circumstances, provides no benefit to the employer, the employee or the public due to the inaccuracy and unreliability of results. Employers will learn little, if anything, of importance; employees may be subjected to unwarranted punitive actions for what could amount to no meaningful reason.

I've discussed some of the legal implications that our union has looked at since this became an issue in 1986. Through arbitration we can challenge drug testing, but at a great cost. We believe very strongly that resistance to drug testing cannot be left to our brothers and sisters in the labour movement who would suddenly be confronted with the request to provide a urine sample in the workplace. What we believe is that this is a matter that's far too important to be left to an individual to decide when confronted with the decision. This is an issue that must be dealt with by society. Testing does nothing to improve workplace productivity or safety, does nothing to deal with social or workplace ills and hazards, and does nothing to find rehabilitative treatment. It is, and has been, the labour movement that has dragged most employers kicking and screaming into EAP or rehabilitative programs.

One of the more positive approaches would be to promote education in the workplace and in the school system, to start looking at the kinds of pressures in society that make drug and alcohol abuse acceptable, to start maintaining and expanding that education network on a life-long basis. We would talk about having meaningful rehabilitative programs and EAPs that deal with the

Leo W Gerard *continued*

issue of substance abuse and alcohol abuse, and look at the root cause of substance abuse. Assistance would also include family counselling, financial counselling and the whole range of efforts that may be needed to get people into a different direction.

We feel we've prepared ourselves, we have talked about drug testing—there seems to be consensus against it. We don't have any meaningful attempt by employers to unilaterally install a program—although some of them have talked about it and some of them were interested.

We think that the approach that we've taken, to talk about potential avenues and to convince employers that that was the wrong way to go, has been fairly successful. We'll try to convince our activists, if an employer tries to unilaterally introduce a drug testing program, to use all means available to fight it because it is a terrible invasion of privacy and is an indignity to workers. It always seems that the indignity is perpetrated on the workers—we don't need any more indignities to workers.

Panel

Canadian Bar Association
Canadian Medical Association
Addiction Research Foundation

Lillian Vine

The next panel represents organizations which have looked at the issue; the Canadian Bar Association and the Addiction Research Foundation of Ontario have published reports. The Canadian Medical Association has not published a report, but its position that no testing, including pre-employment testing, was justified has been publicized. Dr Norman DaSilva had hoped to be with us but because of disruptions mentioned earlier, is unable to be with us today.

Bruce Cunningham, who has already been introduced, will speak on the Addiction Research Foundation's report—how it was put together, and what was considered in making the recommendations.

Colin Campbell will be speaking for the Ontario Branch of the Canadian Bar Association and its report. He attended Upper Canada College, York University, and Osgoode Hall Law School before being called to the bar in 1972. He's Chairman of the Criminal Justice Section and member of the Immigration Section of the Canadian Bar Association. He's also a member and a former Director of the Criminal Lawyers' Association. He has been a member of the Canadian Bar Association Ontario Committee to

Lillian Vine *continued*

study the Implications of Mandatory Drug Testing in the Workplace; its report was published in July 1987. Colin Campbell is a partner in the law firm of Campbell, Boisonneault and Reitmeier in Toronto.

Colin Campbell, Canadian Bar Association

The committee's report on mandatory drug testing was submitted to the Council of the Canadian Bar Association; I'm quite confident that it will be formally passed as a statement of principle and intent.

We need to look at two aspects of this issue: the safety aspect and the legal aspect. From the safety aspect is the fact that some people in the workplace are negatively affected by the use of prescriptive and nonprescriptive drugs legally or illegally obtained, and/or alcohol. Some of them abuse those substances and that affects their performance in the workplace. We don't have any argument that would counter the view that the more a job affects safety, the closer one might get to a breach of safety. An example was used of an airline—the difference between the jobs of porter and pilot. Presumably we would be more concerned with the pilot.

The legal aspects are ones we didn't have in Canada before the Charter. For British Columbia to take away property rights from Japanese Canadians in the Second World War or Quebec to threaten to take away property rights in the fifties from Jehovah's Witnesses was constitutionally all right. It's only in the last decade that we, as lawyers, have had to Americanize ourselves to some extent. The Americans have had to contend with laws about privacy and unreasonable search and seizure. Their case decisions can't totally be put into a Canadian context, but at least we can talk about those sorts of legal concepts.

So there are conflicting rights. On the one hand, we can identify a group of abusers who may pose a problem. On the other hand, they have rights, now legally recognizable, in the form of rights of privacy and the right to not be unlawfully searched. If you think of urine as some form of logical but extreme example of seizure then you see where it goes in the legal theory.

In philosophical terms, these two dichotomous points really don't have to be put together. The question really is expressed in the report under advantages and disadvantages of mandatory drug testing—testing procedures may produce inaccurate results. One conclusion of the article, "Drug Screening in the Workplace: Pros and Cons", written by two individuals trained in psychiatry, behavioural sciences and pharmacology at Northwestern reads, "The use of drug screening techniques in industry does not produce conclusive evidence of impairment, and the results, if not done

Colin Campbell *continued*

with the proper techniques, can produce information that is erroneous." That doesn't give us any statistical sense of how often mistakes are made. In the literature, it became quite clear to us that as long as we rely on urinalysis, we can't be very certain that a positive result means that the person has the substance we're looking for in his/her urine—much less how much or whether it's impairing.

The first disadvantage of mandatory drug testing is that it seems to be another example of the 1950's attitude of lay people toward the medical sciences. There is an optimism that a test would confirm in black and white that a substance was found and the quantity determined; that it can be specified in clear unequivocal language that the amount was an abusive amount, and that it would have affected performance in the workplace. The sad part about that reliance is that it results in our ignoring some of the other means to more reliably identify problems. The behaviour and performance of the individual in the workplace can be a much more reliable guide. What we should be concerning ourselves with is an across-the-board sensitivity to individual employees.

We felt the inaccuracy of results didn't justify the claim that imposed mandatory drug testing would identify abusers. You cannot balance whether the general good should interfere with the individual's rights of privacy. You shouldn't be asking that question unless you can identify abusers and can do it with a degree of accuracy that anybody in the industry would be comfortable about. Tests used in drug testing procedures cannot measure a worker's ability to perform the essential requirements of the job. If you test Monday morning at 8 am as opposed to Thursday afternoon at 2 pm, you would expect that for a proportion of people the results would be very different.

It is important rather to look at behavioural indicators. It is justifiable for the employer to monitor performance and efficiency. If there is emphasis on morale and cooperative venture, then the weekend drinker is going to be noticed not because he has alcohol in his blood or urine when tested, but rather because it's symptomatic of what else is happening to that person. That's the part that's already in place in most industrial settings in terms of counselling for marital problems, financial concerns and worries, all those other things of which the abuse is symptomatic.

As an aside, drug testing is an incredible cost. If one is to analyze it in a cost-effective context, it's hard to justify because of the inaccuracies that have already been indicated. What you get for what you pay isn't a very good return.

Colin Campbell *continued*

Even greater disadvantages are that testing may promote friction in management/labour relations leading to hostility and tension, and mistrust in the workplace among co-workers.

Mandatory drug testing, unless one believes very strongly in general deterrence as a theory, doesn't serve to cure substance abuse; and that's demonstrable. Some of the aftermath testing that's been done well suggests that, after a second test or a year later, there's been a drop in the number of people who have substances in their system. Does that really disclose that they have ceased use or that they are simply being more careful about when to use. Are we concerned with the substance as it exists in the body? Or should we be more concerned with what made the individual feel the need to resort to substance use in the first place? Can we get at that problem in a much less confrontational way by beefing up the programs that should now be in place (and in many instances are) for education and counselling in the workplace.

We were concerned that part of the red herring group of arguments in favour of mandatory drug testing was the point of view that says if you don't test, you're condoning the use and possible abuse of drugs or alcohol. We don't feel that that's a valid argument for mandatory drug testing. It's not incumbent on us to test employees to prove that we're concerned about abuse.

Our general conclusion was that if the goal is public protection—if mandatory drug testing is meant to further the aim of making sure that airline pilots don't get on the plane and try to fly while they are impaired—that isn't being accomplished because the results aren't sufficiently accurate and reliable. Public protection can be better provided by beefing up the programs that allow us to monitor performance in the workplace without resorting to the form of drug testing that is being discussed. Good employees should be kept; poor employees should be dismissed on the basis of demonstrated poor performance not on the basis of results from a drug test. We were cognizant of the difference that one might want to make between mandatory drug testing and testing as a pre-condition for employment. The applicant who hasn't yet been given the job is advised in advance that, as a condition of employment, s/he must first submit to a drug test. It may sound more attractive, but it still begs the question whether the mandatory drug test provides a panacea to the problem by giving us good, hard, accurate information.

Lillian Vine

At the "Drug Testing in the Workplace" Workshop in June, the participants were quite convinced that the tests were acceptably accurate; but that was not justification for testing. A wise man

Lillian Vine *continued*

at the workshop said "If we hang our hats on the tests not being accurate, then we've lost it completely; because if they're not accurate now, they will be a year or two down the road; and testing will still be wrong." That was the position which emerged from the workshop.

Bruce Cunningham, Addiction Research Foundation

I will share with you the recommendations of the Task Force report which was published about 8 months ago. The Addiction Research Foundation was the first organization in Ontario, and possibly in Canada, to make a statement on drug testing. We were prompted by numerous inquiries received at our local offices and at our laboratory and other head office departments. Inquiries were from individuals concerned about employment applications and from management and unions wanting data to clarify or reinforce their position on the subject.

Our President formed an interdisciplinary task group to make a statement that would help inform the public on the subject. We completed our study in November, 1986; senior management processed it, gave final approval and the report was published in March, 1987 as a Best Advice Statement and A Background Reading Document. An important footnote to the statement is "In these recommendations, the term "drug screening" refers to screening for alcohol and other drugs." Although we use the term "drug" in our recommendations, we use it in that broad sense—it's really psychoactive substances.

Our first recommendation was that, "Mass or random drug screening for all employees and/or job applicants for employment not be implemented." We felt that the implementation of screening of all employees or job applicants wasn't warranted for most jobs. The tests focus on use rather than abuse and wouldn't necessarily provide useful information to determine whether a person was capable of doing most jobs.

We recommended against screening, but made two exceptions which received far more media coverage. They are that "drug screening be considered for employees who show deficits in job performance and whose behaviour in the workplace is judged to constitute a safety risk to self or others."

All such cases are to be referred to a qualified medical practitioner, who would be responsible for the decision to test for drugs. We felt that it would not be appropriate for supervisors or other management persons to make the diagnosis and decision that en employee should be tested for drugs. Rather their role would be to identify when an individual constitutes a risk to self or others

Bruce Cunningham *continued*

and make a referral to a medical practitioner. If in the opinion of that practitioner there was no indication of drugs, then a test would not be necessary.

Our second exception was that "pre-employment and continued random drug testing be considered for employees in jobs that pose risk to co-workers and/or the public and that are unsupervised for long periods where the impairment would not normally be subject to observation." We said this back in March, 1987. In conferences and discussions that we've had since then and in meetings with the Canadian Bar Association, it has become clear to us that our concept of a safety-related job was considerably narrower than that of some management representatives.

For example, one person said "Our organization produces vehicles which could get into an accident and injure people, therefore, anybody who works in the factory is in a safety-related job." Our intent was that safety would be interpreted more narrowly to represent direct risk to other employees or to the public.

The report continued with:

> "If drug screening is instituted, the following procedures be followed to guarantee valid, accurate and confidential results: samples should be collected by qualified staff under medical supervision and be forwarded to a qualified laboratory; the individual being tested should have the right to provide and to have recorded a statement of current medical or other drug use; all positive results should be confirmed by gas chromatography/mass spectrometry. The laboratory should not forward positive test results unless the results have been confirmed by this method; the laboratory should communicate test results only to the licensed medical practitioner who forwarded the test samples to the laboratory."

There's one addendum, "Individuals tested should have access to the results and information concerning the type of technology used in their drug screen." so that they would have a basis for questioning or challenging the results. "The practitioner should report back to the employer on the results of the testings and his/her interpretation of same in accordance with standard medical ethics and any applicable company policies and collective agreements."

We had two other recommendations. "If drug screening is instituted, employees with confirmed positive test results be referred to an employee assistance program for assessment and, if needed, counselling and rehabilitation." Testing should only be instituted from a rehabilitative not a punitive perspective with the intention to remove risk to safety and to assist employees.

Bruce Cunningham *continued*

The last recommendation was "If drug screening is instituted, it be preceded by a formal employment policy stating the rationale for the testing and the consequences of confirmed positive test(s) in relation to continuation of employment." These basically were the recommendations.

The Foundation has not issued any further statements on the subject since. Our President has said:

> "We issued it initially to stimulate public discussion of the subject—we were pleased that the Canadian Bar Association and the Human Rights Commission followed and, from their perspective, made their recommendations. We don't feel that our report is in conflict with the other reports, but rather that they all contribute information that could help people make more informed decisions."

We had the feeling, a year ago, that decisions were going to be made without the kind of information that we've been sharing here. I think that with the informed discussions taking place, better decisions regarding drug screening will be made in Canada than were made in the United States.

Lillian Vine

Discussing technical and social validity of tests are Dr Pierre Beaumier of Mann Testing Laboratories and Professor Harry Glasbeek of Osgoode Hall Law School.

Dr Pierre Beaumier of Mann Testing Laboratories graduated with an honours BSc in 1969 from Loyola University in Montreal and obtained a PhD in Organic Chemistry in 1974 from the University of Windsor. He joined Mann Testing Laboratories as a Forensic Chemist and is presently Manager of the Forensic Division of Mann Testing Laboratories.

Mann Testing Laboratories does all the confirmatory testing in Ontario, and so does have a degree of vested interest.

Harry Glasbeek is a Professor of Law at Osgoode Hall in Toronto. He teaches labour law, torts, and corporate and criminal law. He has written books on labour law in Australia and labour law in Canada and has a particular interest in occupational health and safety. He graduated from Melbourne, Australia, and did graduate work in Chicago.

Scientific validity

Pierre Beaumier, Mann Testing Laboratories

I've heard a lot of discussions today about the accuracy of the tests. I will go through the testing procedures to describe how tests are carried out so that it's clear in everyone's mind that the testing, if done properly, is accurate.

Mann Testing Laboratories is doing the lion's share of the drug testing in Ontario. We're also doing drug testing in Alberta, British Columbia, and some in the Maritimes. There are other labs doing drug testing in Quebec.

Who uses drug testing, presently, in Canada? We have some manufacturing plants which are screening; a data processing company is screening all applicants, including those for managerial positions. Financial institutions have expressed a lot of interest in drug testing. There's been contact with investment firms. The transportation sector is probably the most active sector where we're doing testing for airlines and trucking companies. The athletic sector is testing for altered performance based on drugs. Security personnel firms and the armed forces sector are interested in finding out the real answer to the question, "Do we have a drug problem?" Their approach, at this time is to test without names to generate statistics. Penal institutions are also testing; we are doing confirmatory tests for some of the federal prisons. Part of the parole requirement is to stay off drugs, but with no way of regulating whether the individuals stay off drugs; lately, we've been doing some analysis for halfway houses.

Why drug screen? We've listened to a lot of reasons this morning why not. In sports, safety and public perception are perceived reasons for screening. Athletes in the Olympics are checked for steroids or other kinds of drugs which would affect performance. In industry, there is both the safety and the security aspect for screening. Drug habits are costly and theft can be a real problem.

Some of the legal protections you need to consider are: does the individual know the sample is for drug screening? Is there a consent form with the sample?

The integrity of the sample is very important, to protect the individual from sample mix-ups.

In confirmatory analysis, you must go back to the sample after the preliminary screening, redo the analysis to make sure there's been no mix-up and do the fingerprinting confirmation so that you know exactly which drug you're dealing with.

The integrity of the sample starts from the collection, the labelling of the sample and the shipment to the laboratory. The laboratory itself must continue the chain of custody by signing for receipt

Pierre Beaumier *continued*

of the shipment. Sample storage is important. The laboratory must have fairly secure grounds. You must maintain the security of the sample so that nobody is able to tamper with that sample, to protect that sample because someone's livelihood may be at stake.

I've been asked by many people whether one can test in other ways such as hair or saliva. You can.

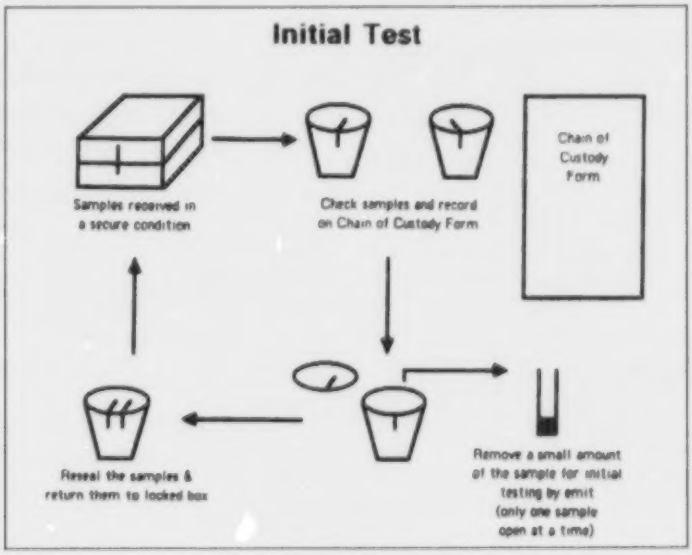
One of the things that we have to have is a chain of custody from the time the sample is produced to the time it's analyzed. The chain of custody has a list of people involved in the whole process with dates and times.

At the very start of your chain of custody, you have sample collection. There are two ways to do this: you can witness the urination, which I believe is degrading to the individual, or you can have private urination with a certification and consent form. The individual certifies that this is his/her urine sample and consents to give the sample; s/he is aware that a drug test will be done on this sample. We advocate the second process.

At Mann Testing Laboratories, we use sample containers with security seals. Once the sample is given at the clinic, the nurse and attendants will put this seal on; nobody is able to open the jar without breaking the seal. Our system also has a seal with a number on it; the laboratory does not know the identity of the individual the sample belongs to. The correlation between the number and the individual is in the physician's hands. We do not have any names at all, so there cannot be any prejudice from the analysis point in the laboratory.

There is an external chain of custody where the shipping containers are labelled and sent to the laboratory. There are different methods to ship containers to the laboratory; if it's a large sampling, we have a box with a lock on it. For a small sampling, we have a mailing container with a destruct seal protecting sample integrity on the way to the laboratory.

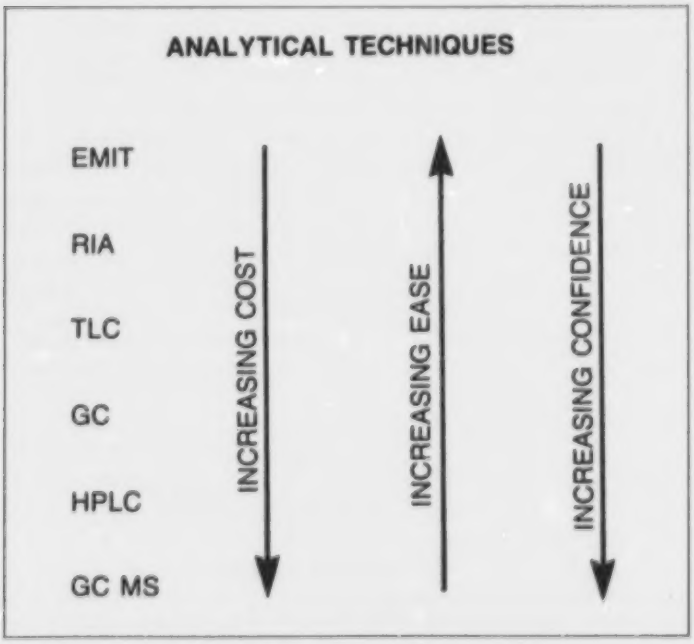
Slide 10


Initial Test
Samples received in a secure condition
Check samples and record on Chain of Custody Form
Chain of Custody Form
Remove a small amount of the sample for initial testing by emit (only one sample open at a time)
Reseal the samples & return them to locked box

Drug analysis has two steps: a screening process which weeds out the negative samples and identifies presumptive positive samples which you then try to confirm.

There are many different techniques that can be used in drug analysis (SLIDE 11).

Slide 11



Pierre Beaumier *continued*

They are: Emit, radioimmunoassay (RIA), thin-layer chromatography (TLC), gas chromatography (GC), high performance liquid chromatography (HPLC), and gas chromatography-mass spectrometry (GC/MS).

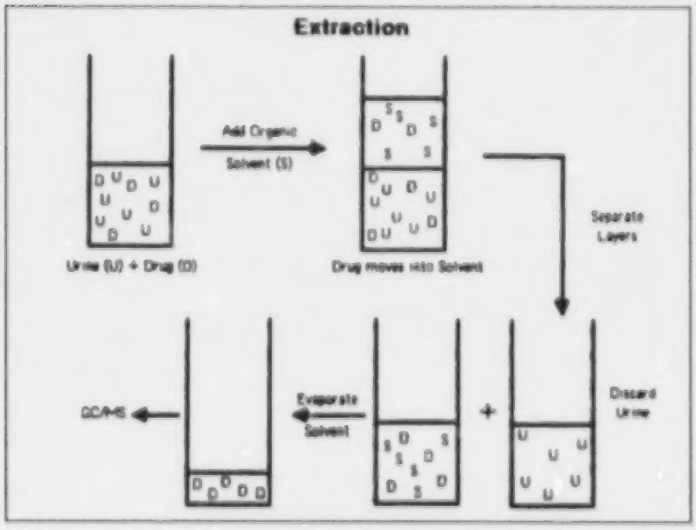
Gas chromatography-mass spectrometry is the most expensive technique because you don't have a high sample throughput; one sample may take you 40 minutes to one hour to process through the system. The Emit test can probably do a sample every 30 seconds. The Emit is much easier—the ease of the tests are in order on the slide with the easiest at the top.

These are the techniques that might be used in a screening test. Immunoassay and/or thin-layer chromatography (TLC) are the most commonly used for screening purposes.

In confirmatory tests some laboratories are advocating thin-layer chromatography or immunoassays, GC or HPLC. Our laboratories do not advocate this at all. The only method which we feel is acceptable is mass spectrometry.

With thin-layer chromatography (TLC) you have a glass plate with a coating of silica gel. At the bottom of the plate a urine extract is deposited. The drug is extracted out of the urine and has been concentrated in this extract.

Slide 12



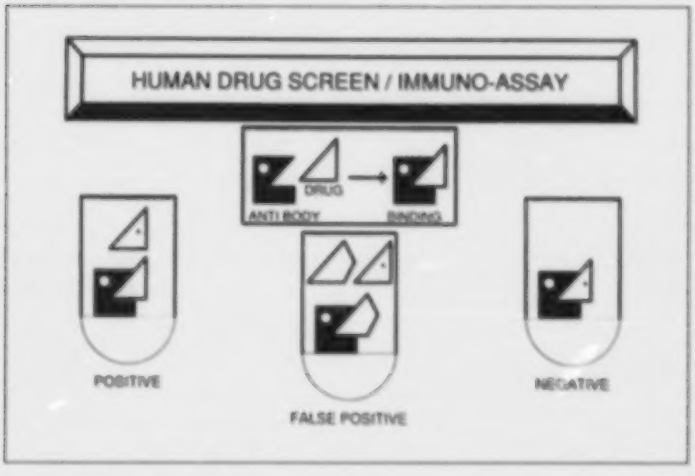
The plate is placed in a tank with solvent which carries the drug and the various urine components up the plate. As the solvent goes up, it starts to separate into different constituents. Following this

Pierre Beaumier *continued*

separation, the plate may be sprayed with some reagent to try to bring out a colour visualization of a specific drug. The shortcoming of the technique is that similar drugs may give you similar spots or colours.

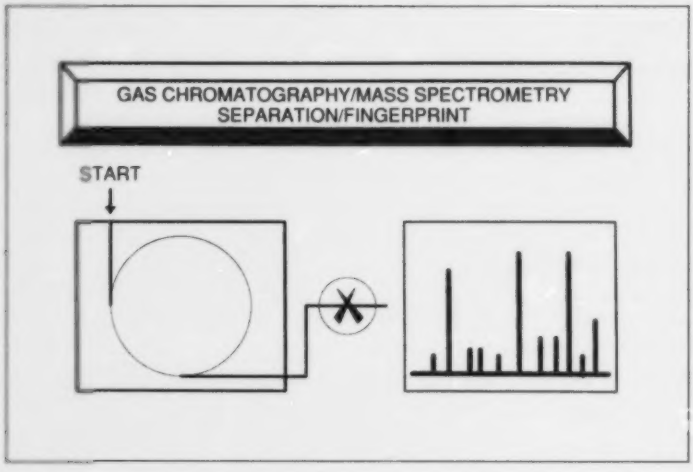
The other technique which may be used in screening is the Emit, or other immunoassay tests. These assays use antibodies against cocain metabolite, marijuana metabolite, morphine metabolite and a variety of other drugs—the antibodies are developed in an animal such as rabbit or sheep. In the Emit case, with the aid of an enzyme system we are able to measure an antibody response for a specific drug present in the urine. This slide is a basic competitive binding sequence.

Slide 13



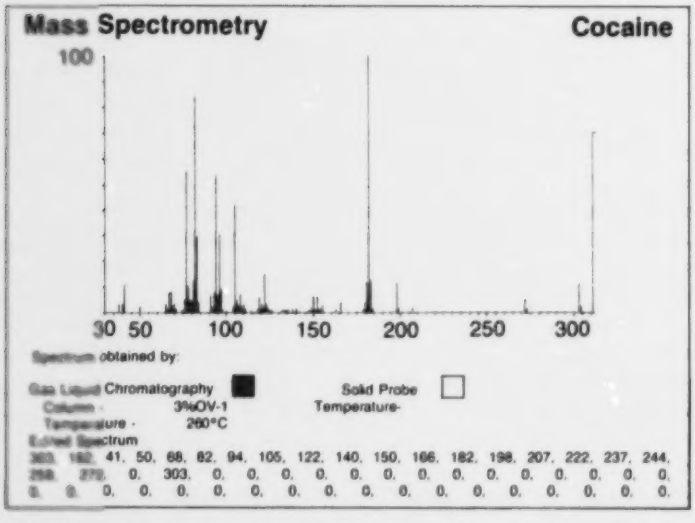
At a discussion at lunch somebody said "If I'm taking antihistamines, I may test positive—if I'm taking some other drug, I may test positive." On an Emit assay or any antibody assay, the antibody can be fooled by a similar-looking drug. So if you're taking an antihistamine and you're screening for amphetamine, you can get a positive reaction. This is why you must confirm your tests and get a fingerprint of the actual drug taken. This can only be done using GC/MS.

Slide 14



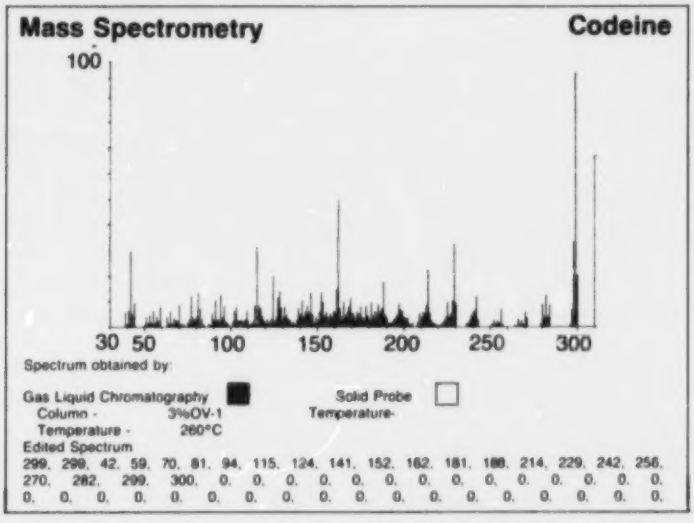
The GC/MS system is the best confirmatory analysis available to science today. At the front end is a gas chromatograph where you inject the urine extract. The loop represents a 30-metre column which separates the urine extract into the various components. At the exist of this long loop, an electron beam gives you the fingerprint of each component as it comes through. All components of the extract get fingerprinted and not just the drug you're looking for. We then take the fingerprints and check them against our computer library and come up with a computer match for the drug you're looking for.

Slide 15


Mass Spectrometry
Cocaine
100
30 50 100 150 200 250 300
Spectrum obtained by:
Gas Liquid Chromatography
Column -
3%OV-1
Temperature -
260°C
Solid Probe
Temperature-
Stored Spectrum
303. 182. 41. 50. 68. 82. 94. 105. 122. 140. 150. 166. 182. 198. 207. 222. 237. 244.
258. 272. 0. 303. 0. 0. 0. 0. 0. 0. 0. 0. 0. 0. 0. 0. 0. 0.
0. 0. 0. 0. 0. 0. 0. 0. 0. 0. 0. 0. 0. 0. 0. 0. 0. 0.

This is the fingerprint of codeine. The next fingerprint will show you cocaine.

Slide 16



Cocaine and codeine are similar in size in terms of molecules, but their fingerprints are like day and night—they're very different.

One of the most controversial drugs that we're going to face in a urine screening program is marijuana. It's controversial because there's a lot of it out there. Our statistics on pre-employment and employed people that are being tested are that between 7-10% test positive for marijuana. Marijuana can get into your system through direct inhalation, passive inhalation and ingestion. Since marijuana does stay in the system a long time, we're recommending a cut-off amount to our clients so that trace amounts from three weeks earlier are not picked up, or that someone does not test positive who did not smoke marijuana but was around people who did.

Passive inhalation may be at a level of 20 or 30 nanograms per ml total cannabinoids in the urine and most of the companies that we're dealing with have a cut-off of 100 ng/ml, which is well above any kind of passive inhalation level. It's unfortunate for the heavy users of marijuana because they may be at a level of over 100 ng/ml for a couple of days, or several weeks. It's stored in the fat and slowly released into the body. When I say two weeks, that may be initial detection or screen. From the standpoint of the laboratory, we have to confirm it—we have to get a second test; and I don't think our second test will go to two weeks. We have to get the mass spectrometer to give us a fingerprint of the THC metabolite in the urine and that, I don't think will take us beyond five or six days—that's for a heavy smoker. We've had people in our smoking experiment at the Addiction Research Foundation smoking one joint and never reaching 100 ng/ml—they had levels of 40 or 50 ng/ml. It depends on the individual, the smoking technique, the amount of fat, how much is stored, and the grade

Pierre Beaumier *continued*

of marijuana. There's a lot of variance in the grade of marijuana—whether it's pure or mixed with alfalfa.

Quality assurance is an important part of the whole system if you're going to have a reliable, accurate testing program. Some of the aspects in a quality assurance program are: that the laboratory have all the standards and controls; that the standard operating procedures be documented; that personnel is trained in using Emit and mass spectrometry; that there is instrument maintenance to ensure the instruments are running properly at the time of analysis; that the facility be secure; that there be, if possible, some blind testing. There should be split samples for retesting purposes and proficiency testing of the laboratory. These are all ingredients of a good program.

If anyone would like to see Mann Testing Laboratories or have more information about testing procedures, we would be pleased to meet with them.

Human rights issues

Harry Glasbeek, Osgoode Hall Law School

I've only been here two hours and I already feel redundant. When I was called to do this a couple of months ago, it was put to me in a very nice way, "This conference will fail without you." I was predisposed to agree, of course, although I have to admit I had never spent even a minute thinking about this subject. And so I agreed. I read as much of the literature as I could find. I thought I had something to say, and today I have already heard it all said. And now I've been introduced as "Mr Controversy"; I feel truly embarrassed!

When I started going through the material, what struck me was who dominated the debate. From a lawyer's perspective, this is fairly clear: it is people interested in health and safety, scientists, medical experts, people who participate in occupational health and safety, and some human rights advocates—by and large lawyers. Obviously, the Canadian Centre for Occupational Health and Safety, the Addiction Research Foundation, the Canadian Bar Association, Human Rights Committee, Health and Welfare, have turned their minds to this as very intelligent, professional technocrats.

I'm a labour lawyer. I will start with what I think are simply non-contentious labour law points. An employer, in the absence of a specific agreement to the contrary, can order an employee to work overtime, even where the agreement says that overtime is voluntary. It is a very strange notion of voluntariness, but that

Harry Glasbeek *continued*

is what our jurisprudence tells us. So, assume that an employee has a wedding which s/he's been planning for some months and a family is coming—200 people, many of them from Europe, and they have set a Sunday aside—and the employer says to him/her on the preceding Thursday, "Look, I'd like you to work on Sunday," and s/he says "No"; and the employer then seeks to discipline. Most adjudicators will say that is an unreasonable demand for overtime by the employer. But if, for instance, an employee has made arrangements to go to a motorcross; s/he loves rallying; s/he has paid the $10 deposit, and has been looking forward to this for weeks. THE Sunday is coming up—s/he's ready to go. And the employer says "Work", and s/he says "No". The employer is entitled to punish. That is standard labour arbitration law. Note that it entitles the employer to control the worker's private life.

What else can the employer do? He can discipline the employee for misconduct away from work in some circumstances, say if s/he brings the employer into disrepute. An employer is able to forbid the employee to engage in certain business activities similar to the employer's, even though they represent no competitive threat. An employer can discipline a worker for not disclosing the misconduct of fellow employees. An employer can discipline an employee for not disclosing his/her own misconduct in an earlier life. An employer can discipline workers who are suspected of having committed crimes or other offences which potentially bring danger to property or other workers.

An employer can discipline an employee for fighting with managers away from the place of work. (Managers do not usually get punished for this.) An employer can use television or other technological electronic surveillance mechanisms at work. It may be appropriate for an employer to check lockers and the belongings of employees in some circumstances. An employer can forbid employees from conversing for certain periods at certain times or from leaving the line when they need to go to the washroom until there is a replacement. An employer can discipline an employee for being insolent. An employer can discipline employees for drinking, and so on. This is common ground; these are non-contentious issues.

Dr Beaumier has just presented a series of things which struck me as most interesting and also largely non-contentious. We can see that the drug testing facilities and the science that we now have will be able to tell us, with a good deal of accuracy if properly done, that certain drugs, at certain levels were present in certain people. I don't think that's really contentious.

Harry Glasbeek *continued*

There are contentious issues. Drug testing will not necessarily show when the drug was taken, whether the presence of the drug creates a problem with job performance, nor will it give an indication of impairment at a particular time. It will not distinguish between use and abuse, and it will not be able to deal with the different effect of different dosages on different people. Those are contentious issues for science and things which create alarm.

Why do people want to test employees for drug use? The arguments employers use are that they need to do it to protect other employees, property, stability of production, even the worker. They say they need to do it to lessen the cost of compensation. Those are the reasons I commonly found in the literature. These arguments do not distinguish between pre-employment and employment. All of these objectives, if they were good objectives, would apply to the pre-employment situation as well, except perhaps for the compensation argument.

Notice that those arguments for testing that the employer advances are exactly the arguments which underlie the right to discipline employees. The arguments which underlie the need to discipline all have to do with protection of the worker, protection of other workers, property, stability of production, saving of costs, etc. That's obvious, right? That's why they need to know about misconduct of fellow employees, that's why they need to stop people from being insubordinate and disrupting production, why they want protection of their property, and monitoring of it to see that none of it disappears. They want monitoring to see that people do things quickly and well and efficiently. That is, the same reasons are given.

That is of some interest, and I think worth focusing on. Notice that the law is as it stands because we said the employer has a prerogative—that's an ugly word. The word prerogative (I looked it up) is said by the Oxford Dictionary to be associated with gods and kings. An interesting word!

We say that the right to achieve these objectives—production, protection of other workers, is the employer's prerogative, subject always to the restraints we've created by law and agreement. Part of that prerogative includes the health and safety conditions of the workplace until interfered with by legislation and agreement.

It becomes very difficult in this context to raise human rights arguments. Human rights, as we discuss them in this society have to do with equality of access and equality of opportunity. So, what does that mean? It means that we do not allow an employer or the owner of a house or a rental building to discriminate on the

Harry Glasbeek *continued*

basis of such things as race, gender, age, ethnic origin, nationality. Why do we not? Because we're decent human beings.

We do not allow differentiation unless the employer can genuinely claim that productivity is adversely affected. It is the employer's right to make determinations about productivity, but only about productivity or that privilege would reach much too far. If an employer can actually show that it is necessary to differentiate on the basis of age or sex, because of the requirements of the job—a bona fide occupational requirement—that will be permitted by law. That is always a legitimate excuse. Productivity is the key.

That being so, we have a very interesting exception in discussing the drug testing issue. It's the question of handicap. Our human rights codes are just beginning to grapple with the issue of handicap and productivity. We've actually said in some of the human rights codes in this country that an employer will have to make a reasonable accommodation for handicapped people. The employer cannot say "Look at that handicapped person—no productive use whatsoever". We say "Make an effort."

We can now begin to understand some of the reports that the various researchers have made for the purpose of making recommendations regarding drug testing. I was very interested to hear the review of the Addiction Research Foundation report and the Canadian Bar Association's presentation.

If we remember that our starting position is that the employer can produce as s/he likes unless touched by legislation of specific agreement, and that health and safety is one of the matters s/he controls, we can understand some of the recommendations. Except for the Canadian Bar Association, we see exceptions to no drug testing, such as if the public is harmed; productivity is impaired; other workers are affected;—there might be some need to drug test. We might then give permission in those cases, and we should draft rules to do that. That is, we should make it exceptional but, nonetheless, permitted.

The Canadian Bar Association has set itself against that. When one reads the report and when one hears the explanation of Mr Campbell today, this hinges in a large part on tests not being satisfactory and the harm that this could cause. When we take that reservation away, I wonder how the Canadian Bar Association would come out.

Having established the obvious, what have we now got in this drug testing debate? One thing that strikes a lawyer is that it is basically about illegal drugs and, occasionally, alcohol. Now it is government's role to say which drugs are legal and illegal. If

Harry Glasbeek *continued*

governments consider drug use a problem, why don't they just get rid of it? Why don't they just stop illegal drugs? There are two ways of doing that—make them all legal, which is a perfectly sensible proposition; or alternatively, crack down. The cracking down helps. Every week, I hear that the largest drug haul in history is made. So governments are doing something about those things but, obviously, not terribly successfully.

Consider a situation in which the government said "Let's get really serious about this." We have made drugs illegal because they present a public health problem. They harm people, the way they live, the way they behave, the way they affect other people, the way they endanger other people, and the costs they impose on society. These arguments do not sound unlike those made by employers. Imagine if the government said it like that. And we said, they say what employers say—let's go test like employers would. They could then come to this room, to your houses, and your children's houses, and all over the place to take samples. Little people walking around taking urine samples. What would we say? That's not even a real question, is it? That's a rhetorical question if I ever heard one. We wouldn't let the blighters get away with that!

In fact, as Mr Campbell pointed out, we've made an exception with the RIDE program in Toronto. We've got policemen on every corner and they test. They apologize. They give us a little snow scraper when they stop us. A lot of people are stopped who don't drink; they are just hassled; they are embarrassed. There may be important temperance people in these cars for all we know! Alternatively, even if people are impaired or found to be impaired or found to have consumed some alcohol, there is no reason to believe that this necessarily presents a danger to anyone. And we allow that; in fact we encourage that testing because we think it's not, by and large, a bad thing—of course not too often, just at Christmas.

We don't let the governments do drug testing in this way because we complain about our human rights being violated, about the government being too intrusive, about Big Brother getting to us all, about harassing us, about not treating us as individuals or autonomous citizens—as Sovereigns in our own right, equal one to the other, who do not require such demeaning approaches to our lives for our own good—that's why we resent it, right?

This is common ground. So governments can't do it unless there's an epidemic. They need a tremendous problem before they can even begin to talk about doing such a thing. They have to have a perception of an enormous problem, as in the case of drinking

Harry Glasbeek *continued*

and driving, before they can even approach the public and say we want to test.

You see, there's the difficulty: employers need none of those justifications. They can do tests. I think that is why you have conferences. That's why this has become an issue. This is an issue because it reveals who has real power in our society. It is not the elected government, it is the private employer. That is something we do not like to admit, and that is why we get terribly upset.

As a labour lawyer I remind you of the language of labour law and indeed some of the language of literature on the subject of drug testing. By making an employee urinate into a bottle, it is said you are finding the worker guilty yet everybody should be presumed innocent. This is the language of the criminal law—criminal law power is the most immense and awesome power we have awarded the State. It is criminal law power we talk about—that kind of situation in the employment setting—that is why we use the word "discipline". We worry because losing a job in our society is a far more serious penalty than most criminal penalties. It is exacted privately.

Leo Gerard talked about grievance arbitration and collective bargaining. You have to remember that over 50% of workers in our country have no right to grievance arbitration. None at all. They are citizens too.

What are the politics of this? I don't know, of course. I'm only a lawyer. Drug testing started when Ronald Reagan had a fit and then Brian Mulroney sort of said "Me, too." Why would Ronald Reagan do a thing like that? It is part of marginalizing people in society, calling them names, saying things about them. It gets rid of all sorts of people—people who have no jobs, who take drugs, who drop out of school—usually black or hispanic in the United States—in the same way we've done with homosexuals and AIDS. It is politically useful for governments of certain kinds.

That's why it didn't fly so well in this country. We know that the convictions for drug use in Canada are going down—that doesn't mean there's any less use or abuse. If the convictions are going down, it's a very strange thing that the government is worrying more, while seemingly doing less about it.

In the US, testing has turned into "constitutional problems". That is, the courts have said "Listen, do you really need to do this? Is it such a danger to your life?" The results are mixed so far, but by and large the courts are setting their face against this, saying it's an invasion of privacy and citing the Fourth Amendment, etc.

Harry Glasbeek *continued*

In Canada, we have one major case on the issue. The case of Dion, on the question of testing in a penitentiary. The court said "No way—you can't do that." Notice what this means—prisoners are legally better off than factory workers. Think about it. It is a constitutional accident, but it is instructive.

Why would employers want to test? From the labour relations point of view, I was taught in my industrial relations school that this is bad industrial relations. It's going to make people mad. Who needs people mad when you want them to work? One of the arguments that employers make is that they are worried about workers' welfare—even those who are drug users. The problem with that is while it is probably true in some cases, it is, to a worker, an unbelievable argument. Because what workers see is that for every bit of occupational health and safety protection they have, they've had to fight—nothing has been given. So they just don't believe it. Employers do not like to make arguments that are difficult to believe.

One of the arguments, of course, is just plain ideology. They just think it is right that people should not use drugs. And so that drives them. Another much clearer argument made by employers is that a lot of the accidents and problems and lack of production are due, not to lack of good investment, better technology, or to the system of work, but are really due to foolish individuals who use drugs. This diverts attention away from serious health and safety problems. There may yet be an argument. Testing has an enormous disciplining effect on the work force. It is a real worry for the worker who is trying to hang onto a job. It divides workers from one another.

Note the famous example of Con Edison. They got terribly concerned about their workers' welfare so they started pre-employment testing. Out of 4,000 workers, they rejected approximately 10%—440 people. They found absenteeism went down 25%, complaints about health and safety went down by a great number. But does that mean that people shouldn't have been away, that they weren't being hurt? Or simply that they were scared out of their wits? It is a serious question.

There is something else. We are entering an era that is lovingly called by some of us who work in this field, "New Fordism". That is, a new kind of technology, new capital mobility, a whole economic rearrangement. The conventional politician likes to talk about the new economical structure, the new competitive spirit. What it means is that there are too many workers, too few jobs, massive lay-offs. For the first time, from 1978-79 on employers, instead of dealing with economic problems as they arise by reassessing and relocating and doing different things, are now

Harry Glasbeek *continued*

happy to have massive lay-offs. So there is less need to keep workers happy as workers are not in a position to conduct massive militant action as they were in the mid-60's.

There is yet another argument. The new technologies which are being used are very sophisticated; employers do believe that their workers should have more skills, should be more alert, should be watching the gauges better, should be able to push the disc with much more precision than they ever did, whereas on the assembly line there was actually a virtue in having an employee somewhat comatose. This is a good reason for attacking the use of drugs in the workplace.

I don't want all those arguments to be used to justify drug testing, but given their legitimacy in our kind of economy, they can be countered effectively. Thank you for asking me to speak.

How governments are looking at drug testing in the workplace

Lillian Vine

I am sorry to say that this panel did not materialize. But I do have some information to share with you.

At the June workshop, an official of the Province of Ontario was one of the participants. He spoke of one activity then taking place; he reported that at a meeting of Canadian Ministers responsible for occupational health and safety in Quebec City in November, 1986, then-Labour Minister of Ontario, William Wrye, said "There is a problem and we ought to be looking at the issue of drug use." A committee of officials was established. I quote from our June workshop proceedings, (the committee) "...which I chair, of labour officials of all Canadian jurisdictions; we have begun to meet and there was some commitment to communicate." I am sorry to say there is nothing to communicate other than that the committee was set up and has met; I could not even obtain its terms of reference. Since Ontario led the way and is chairing the committee, I suggest you contact the Ontario Ministry of Labour for information.

The other speaker was to be Colin Churcher, Director-General, Railway Safety, Transport Canada. I first contacted Colin Churcher when I read in the press that the Honourable John Crosbie was going to mandate drug testing in the railway industry. I found out that wasn't so, but that a committee had been set up. Colin Churcher was interested in the workshop and distributed the recommendations made by the workshop to the committee for discussion. The committee has completed its work but the report has not yet been released.

Lillian Vine *continued*

Colin Churcher had hoped to be here today but surgery prevented him from being here. He sent the terms of reference of the working group and the terms of reference for a study commissioned as part of the work (3). Excerpts follow.

> "The Working Group on the Control of Drug and Alcohol Abuse in Railway Operations established by Mr Crosbie consisted of railway, labour, railway companies, labour Canada and Health and Welfare Canada. In addition, a representative from the Canadian Human Rights Commission participated in the work of the group as an observer. The terms of reference are:
>
> **Background:**
>
> The Minister of Transport, in his announcement in Edmonton on April 10, 1987, indicated that he shared the concern expressed by the railways over the issue of drug and alcohol usage. Mr Crosbie initiated a Task Force of interested parties to come up with an action plan by September 1, 1987. This plan should ensure that an optimum level of safety be achieved while, at the same time, preserving all the essential elements of human dignity and human rights.
>
> **Objective:**
>
> Safety is of paramount importance in railway operation. The objective is to ensure that railway operating personnel do not work under the immediate or the long term effects of drugs or alcohol.
>
> **Premise:**
>
> Although there may not be much hard evidence to substantiate the problem, there is sufficient indication that the problem warrants close examination on the part of all concerned. All parties agree that the purpose of the Task Force is to define the dimensions of the problem and to make recommendations on action that are appropriate to those findings.
>
> **Effects**
>
> There is a need to document the way in which drugs and alcohol affect the judgment of railway crews and how this impairs their ability to operate trains in a safe manner.

Extent of the problem

It is essential to identify the size of the problem. With the lack of good data for the Canadian railways the following areas should be examined:

a) What statistics exist in relation to Canadian rail operations? How many accidents have been attributed to alcohol or drugs?

b) What statistics exist on drug and alcohol abuse on US railways?

c) What statistics exist on drug and alcohol use in other modes, eg, trucks?

d) What statistics exist on drugs and alcohol use in Canadian society?

e) What surveys should be carried out under the direction of the Task Force in support of the objective?

What future activities are suggested by the above information, including joint management/union activities, education programs, regular medicals, testing?''(3)

As part of its work, the group undertook a survey of drugs and alcohol in the railway industry. The survey was to target railway operating personnel holding designated positions; total employment in these positions is over 35,000. Its objective was to quantify systematically the attitudes and behaviour of certain railway operating personnel with respect to work performance and the consumption of alcohol and various drugs. The study was to obtain information on self-reported use of alcohol and other drugs, perceptions of the extent of use of alcohol and drugs within the industry, attitudes towards this use while working, reported impaired behaviour while on duty, perceived risks, attitudes regarding working conditions conducive to alcohol and drug use, as well as supplementary standard demographic data.

The first task of the contractor was to identify the key issues to be covered by the survey. These were to be determined in consultation with the client following review of information from other sources, such as addiction agencies, Health and Welfare Canada.

I recently learned that the Health and Welfare Canada standing committee had been looking at the problem over a period of time and had just produced a report called *Booze, Pills and Dope, Reducing Substance Abuse in Canada* (2). This report has been presented to the House within the last two or three weeks.

Lillian Vine *continued*

The standing committee recommended that employers not introduce mass or random drug screening of either job applicants or employees except in cases in which drug use by employees constitutes a real risk to safety.

It recommended conditions under which drug screening may be introduced: there must be cause; the employee must have shown evidence of impairment or of performance difficulties; the testing procedure must provide a secure chain of evidence to ensure that samples have not been tampered with or intentionally altered; the specimen must be collected in a manner which protects the privacy and dignity of the individual; all positive test results must be confirmed by gas chromatography-mass spectometry or tests of equal precision and specificity.

It further stated that testing must be used to assist the employee in seeking appropriate treatment for drug abuse where warranted; that test results should not be used as evidence in criminal proceedings; that results of positive tests and confirmation should be conveyed to a licensed medical practitioner acceptable to both the employee and the employer; the employee be given the opportunity to meet with the medical practitioner or to present evidence with regard to the positive finding before the medical practitioner recommends a course of action to the employee and the employer; and that any limited drug testing which may be introduced must include screening for alcohol abuse.

Federal Health Minister, the Honourable Jake Epp, made a speech last week about drugs in the workplace (1). In the speech he concludes that drug abuse is a major problem in Canada and that it is important to develop a national strategy. However, he finds that simple reinforcement is only part of the solution. He would find it extremely unfortunate if drug abuse were to become an excuse for social vigilantism. He feels that the best defences against drug abuse are education and prevention. He speaks of the fundamental importance of coordination and networking. He speaks of the reasons for increasing interest in workplace-based programming to prevent disease and promote health:

> "...because everyone loses when a skilled and valued employee develops a physical or mental illness. As well, since workers spend more than 30% of their waking hours at the worksite, the workplace is both a convenient and effective setting for getting health-centred information and programming across to a wide range of groups and an important conduit for accessing treatment and rehabilitation resources available in the community."(1)

Lillian Vine *continued*

"The current hypothesis is that alcohol and drug consumption is endangering safety on the job. From this, many have assumed that there is justification for instituting drug testing to protect affected individuals, their co-workers and the general public from accidents and employers from liability, especially in the transport field.

The premises underlying this perspective on the relationship between drug abuse and safety deserve careful scrutiny.

A first observation is that we lack data about this connection."(1)

"Another problem in this area is the fact that alcohol and drug use does not necessarily equal impairment, and impairment does not necessarily equal occupational impairment."(1)

"First, alcohol and drugs are not the single factor in occupational injury or death. Indeed, they are part of a very large picture which can include equipment failure, job culture, fatigue, a variety of physical and mental stress factors and other considerations."(1)

But he cautions against turning to drug testing as a solution:

"Drug testing can threaten the fragile ententes that have been built up in this area. There are high costs to be paid for it in the form of labour-management strife and major set-backs in the process of building effective drug abuse treatment and rehabilitation programming."(1)

"The second issue which is central to the drug testing debate is the appropriateness of the process.

Over the last several years new drug testing technologies have emerged which can detect the presence of illegal drugs or their metabolites in urine and blood. Without going into the technical details, certain of these tests are better than others.

Much of this technical development has proceeded, however, outside of an appropriate workplace or policy context.

The best illustration of this is that, validity and reliability aside, tests of this kind do not answer the important questions, namely how much drug was consumed, when was it consumed (ie on or off the job) and what level of impairment, if any, ensued. Consequently, their use has been equated with

Lillian Vine *continued*

> a punitive effort to extend the police function on to the factory floor."(1)

He recognizes the risks of testing and the efforts of the constituencies which have mobilized against it. He emphasizes alternatives to testing:

> "I believe that in the drug field we should play to our strengths, chief among which is a long Canadian tradition of effective employee assistance programming and workplace prevention. Typically, firms which make the effort in these areas have both healthier workforces and low accident rates."(1)
>
> In the wake of the National Drug Strategy, we plan to accelerate this type of EAP support activity."(1)

I asked somebody in government, "Why are all these things going on simultaneously? If one is a joint effort initiated by Ministers responsible for occupational health and safety throughout the country, yet other government groups are meeting and reporting, what will be the conclusions and when? Is everybody waiting for the others or are some going to take action while others are still navel gazing?". I received no answer.

The drug testing issue itself may well be settled before some quarters decide how it should be settled. Everyone hopes it will be settled the right way.

Questions

Reg Basken

Dr Beaumier, I have no degree of expertise on the testing itself, but I want to discuss some of the issues that we face. I am a little concerned that you didn't say as much as I would have liked about accuracy and cost because I think employers need to know costs if they are going to get involved in testing. It's not just the cost of your test; in our union, we've got estimates ranging from $200 to $1,400 per test, including the cost of the confirmatory test, the transportation, the individual's time and the supervisor's time.

Pierre Beaumier

The sample is collected by an impartial individual such as the medical officer of the company, then the sample is sealed. If the sample is sealed, there is no tampering of the sample. The sample can be shipped from the factory to the laboratory—there's no

Pierre Beaumier *continued*

problem with that. Secondly, the cost from the point of analysis for street drugs is $35 which includes the mass spectrometry confirmation.

Reg Basken

But those are your costs. I'm saying that the employer has a substantial cost in addition to yours. I'm completely convinced that you can find the presence of drugs and you can identify the drug. Testing is wrong not because the test is inaccurate--it is not. The important thing for this conference to understand is what testing means to the individual and to the labour relations atmosphere. The issue of testing is not about accuracy, nor cost, nor your ability to test.

Pierre Beaumier

I would like to touch on one point. Finding a drug in the urine is telling you about use, it's not telling you the condition the individual is in at the time the sample is taken. The only drug that I know of where there is a correlation between the level in the urine and the level in the blood is alcohol.

Reg Basken

You can identify use; you cannot identify abuse or work-related issues. Is the presence of that drug or the use of that drug offensive to the world of work relationships? Does it harm productivity? Does it cause tardiness? Does it cause personality changes? Is it any of the employer's business that a person smoked marijuana last weekend, or on vacation and three weeks later at work marijuana is found in the urine? The facts of life in the employer/employee relationship are likely "No" because we haven't yet established that the employer is responsible for the morals of society nor that the workplace is to be used as the control for all the abuses that occur in society.

We're not talking about an identifiable criminal offence. In the world of work, it's much simpler. You can be fired from your job even if you haven't been a drug abuser, haven't been charged with possession or trafficking or even contacted by the enforcement departments. The other feature of testing is consent. If I give someone a consent form and say "Sign this consent form because we'd like you to take a drug test" whether explicitly or implicitly, that says if s/he doesn't sign it, s/he's going to be fired. The consent doesn't mean much in the world of work because of the implication--that if you don't consent, you're subject to disciplinary action and termination or as we call it in the world

Reg Basken *continued*

of work "the corporate capital punishment". You're in a catch-22 position.

Hank Gauthier, National Administrative Assistant, Energy and Chemical Workers Union

I would like to read a short article entitled, "MD Admits False Drug Test Results".

> A doctor pleaded guilty Tuesday to giving federal officials false test results on workers involved in three train accidents. As physician responsible for drug test on employees involved in railway and airplane accidents, Dr X, faces up to 15 years in prison and $30,000 (US) in fines on the three counts. The charges alleged he provided false results on blood plasma tests presumably conducted with equipment he did not have to determine any recent drug or alcohol use by railroad workers. Sixteen cases were investigated in which Dr X allegedly provided false information to federal officials. Dr X pleaded guilty in three of those cases, the prosecutor said. Dr X was Supervisor of the Forensic Toxicology Research Unit of the Civil Aeromedical Institute of the Federal Aviation Administration. The unit, under contract with the Federal Railroad Administration, tested railway employees for drug use after accidents.

No doctor here would want to be linked with this lowest common denominator of the profession; neither would the worker want this linkage with the drug user or the drug pusher in the workplace. To be treated in that way is demoralizing.

Brian Kohler, Health & Safety Officer, Energy & Chemical Workers' Union, Local 800

I happen to work as a laboratory technician when I'm not on union business and I have done so for 11 years. I'm quite familiar with the instrumental techniques involved in the confirmatory tests such as gas chromatography, HPLC, mass spectrometry, as well as having a general familiarity with the techniques in immunoassays.

I agree that the accuracy of the tests is not the issue, but I do feel an advertisement for the tests should not go unchallenged. The uninformed public, which includes corporate managers, holds onto a myth of laboratory accuracy with a mental image of an almost priest-like technological elite practising chemical analysis in some scientific holy of holies. While it may be true that a particular analytical technique is highly accurate if handled with the utmost diligence and done in triplicate with a blindfold blank, this seldom happens in the real world. This is a problem in commercial

Brian Kohler *continued*

laboratories whose income depends upon getting a certain number of samples out in a certain amount of time.

Some errors which can occur, as Dr Beaumier mentioned include individual response to a particular intoxicant, the time of day, cleanliness of the container, the actual performance of the test, the handling of the paperwork (which is easily altered), the condition of the equipment (whether it's clean, dirty, old, new, calibrated recently or not so recently), the condition of the operator (whether s/he is ahead, behind, tired, sick or happy), the conditions of the work (whether it's piecework, whether rush jobs interfere with the order of work) or participation of the lab in a legitimate quality control program. As a result of the sum of such factors, most industrial hygiene tests experience plus or minus 20-25% accuracy which is considered acceptable to good.

You must consider the total accuracy of the entire system not just the accuracy of the instrumental technique involved. Although you have outlined a number of safeguards, there is no system that is foolproof. Laboratory owners and workers are human beings who may be honest or corrupt, smart or stupid; no system that you have described is an absolute guarantee of accuracy. You're dealing with people, their reputations, livelihoods and lives. In my opinion, to attempt to make money from manipulating people in this way is difficult to morally justify.

Pierre Beaumier

What I talked about is identification of a drug in a sample. When you're talking about plus or minus 20%, that's if you're doing a quantitative analysis, as you do on a breathalyzer. We take the utmost care to have the very best personnel do this analysis. The personnel doing the analysis are themselves being drug tested—that includes me. All reports are double-checked—two individuals make sure that there are no typos in the report. My specialized team looked at all potential errors in the laboratory itself. In response to your comment about drug testing being profitable—drug testing is actually a money losing proposition.

Tony Hammer

Can I make one remark in defence of Dr Beaumier. Mann Testing Laboratories is a highly credible organization in Toronto. They were not set up for the purpose of drug testing; they have a long track record of contribution towards safety, forensic sciences and various other things. I have not heard from any source that Mann Testing Laboratories are in any way deficient or delinquent in the way they handle or analyze samples.

Lillian Vine

I might say that when Mann Laboratories offered to participate, I had doubts because of their perceived vested interest in drug testing. On thinking it over, I wondered—if I needed open heart surgery, would I go to someone who's making a living at it by doing a lot of it in spite of the vested interest to do more surgery, or would I go to the simon-pure amateur who's never done it before? Where would I expect the best results? When I looked at it that way, it was patently evident that you would want information from a reputable laboratory that does a lot of testing for drugs. Although Mann Labs may have a vested interest to promote drug testing, it certainly has an interest to maintain its good reputation.

Neil Johnston

If employers do have the right to conduct drug testing, do they also have the right to test employees for the presence of therapeutic drugs which may also affect safety?

I'd like to address the question to either Colin Campbell or Professor Glasbeek. Would it be correct to understand that employers do have the right in theory to insist that workers be tested to ensure that they are taking drugs which are prescribed for them for medical conditions?

Harry Glasbeek

Once you start saying that the employer is entitled to test because it affects the productive enterprise or because it affects the safety of property and other employees, then s/he should be able to check into people's continued well-being, which may require maintenance. It's no different to what we already do. For instance, we have alcohol rehabilitation programs and people are continuously checked. In theory, that answer ought to be yes.

Colin Campbell

That distinction is a valid one to make between theory and practice. As much as one would like to give a legal answer, law is politics—there is no short answer. You don't want to fall back on the accuracy of drug testing as your primary argument against mandatory drug testing because the inverse that you've placed in this question isn't available to you then. If an employee must take Dilantin and is working in a very technical machinery workplace, it's in everyone's best interest, primarily the employee's, that s/he maintains a responsible attitude to taking the drug. But does that mean therapeutic drug compliance can be required of all employees without there being a special contractual term in that employee's situation? Professor Glasbeek says "Yes". I would have said

Colin Campbell *continued*

"No"—it's not likely to be enforced—that is the politics. The RIDE program is a classic example of selling to the public the efficacy of testing and intrusion of legal rights.

Stu Sullivan

Isn't drug testing really part of the whole screening process for the "superworker"? The whole screening process where we start looking into the background of people—tying it into medical surveillance. I've seen forms that ask you to trace back the history of your family, that is just part of the whole screening purpose to hire the worker who is less likely to get an industrial disease and less likely to be a compensation case. We disguise it as a social issue, when the real issue is trying to get that "superworker".

Lillian Vine

In the workshop, pre-employment drug testing was one of the issues of disagreement between employers, professionals and labour. The employer group said that they would do whatever they could to assist employees and to make the workplace safe, but that they were entitled to protection from hiring people who might become problems.

Peggy Nash, National Representative, Department of Communications, Canadian Auto Workers

A lot of the debate is productive; it seems to echo much of the debate of our meeting in June. My feeling is that the validity and accuracy of the testing is not the issue. Whether the testing is legal or illegal is not the issue either. We're talking about issues of rights and control in the workplace, and whether employers ought to have that kind of control. American Motors conducted extensive pre-employment testing and is now reconsidering. I understand that they are going to cease and that's the result of public pressure about the morality of conducting these kinds of tests.

Are we working towards a recommendation or only towards proceedings that are going to be distributed? What is going to come out of this? I understand that the Canadian Bar Association policy will be passed in a couple of weeks. What will be the result of that?

Colin Campbell

The purpose of our wanting the Canadian Bar Association to pass its resolutions is because it helps formulate public policy. We would hope that because we represent over 75% of the lawyers who practise across Canada that that would have a telling influence on the attitudes of plans to implement mandatory drug testing. The

Colin Campbell *continued*

advice that employees would get from lawyers would be very much influenced by the fact that lawyers, through this association, have made a statement.

Lillian Vine

The Centre will do what you want it to do. The purpose of the conference was to open the doors to more people than were invited to the workshop, to give them an opportunity to listen and to participate. The number of people that you represent between you is huge; though you are small in number, you speak for many people. If you want to make a statement, we will be pleased to do so on your behalf, not as a Centre position. We will publish the proceedings. The proceedings of workshops are requested often; they are used in many ways. We know that when people read them that they provide a basis for discussion.

Peggy Nash

You mentioned some government activities that are taking place now; I would assume the proceedings from our workshop and probably this conference will be forwarded to those various government bodies that are now investigating drug testing.

Lillian Vine

We do not know all the people investigating it. Neither do people in government that I've asked. Some of those activities I did not know about until I read about them in the press. But I assure you that the ones we do know about received the workshops proceedings and will receive the proceedings of this conference.

Debbie Weedon

I ask again why the issue of drug testing in the workplace? I worry about health and safety. I do not have much faith in many institutions in workplace health and safety. If you look at provinces, every province has different designated substances; if it is not safe in Ontario, it is not safe in PEI. Many companies would like to get reports of accidents down because they save on WCB costs. That does not mean there are fewer accidents in the workplace, but that fewer are being reported. Workers in the plants and offices are subjected to all kinds of intimidation and indignities.

Closing remarks

Lillian Vine

I am not sure if you are asking why are we focusing on drug testing when there are so many other issues; or whether employers should not think about drug testing until they look at other factors in the workplace which are much more dangerous. The Centre held the workshop and this conference on drug testing because it became an issue in Canada with effects in the workplace; we were asked to bring people together to discuss it. We are prepared to do the same for other issues. If you would like us to bring people together to discuss any topic on workplace health and safety, we would be delighted to propose it to our Executive Board.

It's my pleasure to thank you very much for being with us. I hope you got as much out of this day as I did. I only wish there were more people here to share it. There will be proceedings, which will enable more people to share this conference. Thank you very much. It's been a pleasure being with you today.

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